STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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On Its Own Motion,	:	
	:	
-vs-	:	
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Central Illinois Light Company, et al.,	:	
	:	
Respondents,	:	Docket No. 00-0494
	:	
Proceeding On the Commission's Own Motion Concerning Delivery Services Tariffs Of All Illinois Electric Utilities To Determine What If Any Changes Should Be Ordered To Promote Statewide Uniformity Of Delivery Services and Related Tariffed Offerings.	:	

REPLY BRIEF OF
COMMONWEALTH EDISON COMPANY

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REPLY BRIEF OF COMMONWEALTH EDISON COMPANY

Commonwealth Edison Company ("ComEd"), through its counsel, pursuant to the order of the Hearing Examiner, hereby submits its Reply Brief.

INTRODUCTION

ComEd showed in its Initial Brief, with extensive citations to the evidence in the record, that the Illinois Commerce Commission ("the Commission") should approve ComEd's proposals, and ComEd's acceptance in the spirit of compromise of certain of the Commission's Staff's ("Staff") proposals, that in combination provide for:

- the adoption of ComEd's proposed uniform outlines for customer and supplier delivery services tariffs[1] to be used both in the electronic versions of the tariffs on the utilities' World Wide Web ("Web") sites and in the actual tariffs themselves,

[1] Utilities provide delivery services to customers, not generally to Retail Electric Suppliers ("RESs"). The shorthand term "supplier delivery services tariff" is used here only for convenience.

- the adoption of tables of contents in those tariffs,
- the development and adoption of common definitions in those tariffs, and
- locating definitions at the front of those tariffs.

There are twenty-one parties to this Docket, nineteen of which agreed to the Stipulation and the agreed list of issues that could be litigated in this Docket that were approved by the Commission in its Interim Order.[2] (Interim Order, p. 3, and Appendix ["App."] A, B). Eleven parties filed Initial Briefs. A review of the parties' Initial Briefs warrants no conclusion other than that the foregoing proposals should be adopted. In fact, the other parties' Initial Briefs present almost no criticism of those proposals as such.

ComEd, in its Initial Brief, also demonstrated, with a host of citations to the law and to the evidence, that the Commission as a matter of law must, and on the merits should, reject MidAmerican Energy Company's ("MidAmerican") and Staff's respective inconsistent proposals that the Commission initiate, on the heels of this Docket, still another Docket to establish *pro forma* or "template" delivery services tariffs.[3] Only two other parties, the Illinois Industrial Energy Consumers ("the IIEC") and NewEnergy Midwest, L.L.C. ("NewEnergy"), who filed a joint Initial Brief, recommend that the Commission adopt MidAmerican's proposal. No other party recommends that the Commission adopt Staff's proposal, although MidAmerican, IIEC, and NewEnergy presumably favor it in the alternative. Nothing in any party's Initial Brief would permit, much less justify, the adoption of either proposal.

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[2] While Alliant Energy Services Corporation as such did not enter into the Stipulation and the agreed issues list, its two utility affiliates did do so. The remaining party, Enron Energy Services, Inc. ("Enron"), petitioned to intervene after the Commission approved the Stipulation and the agreed issues list. Enron has stated no position on any issue.

[3] MidAmerican, despite its protestations to the contrary (Reply Brief of [MidAmerican] ["MidAmerican Rep. Br."], p. 6, has retreated and "waffled" on several key aspects of its proposal. (Initial Brief of [ComEd] ["ComEd Init. Br."], pp. 14, 30-31 and n.2).

Seventeen parties oppose, apparently oppose, or at least have not stated that they support, MidAmerican's and Staff's proposals. Six parties, including ComEd, four other utilities, and one Alternative Retail Electric Supplier, Peoples Energy Services Corporation, expressly oppose MidAmerican's and Staff's proposals. Nine of the eleven remaining parties entered into the agreed Stipulation and the agreed list of issues that could be litigated in this Docket. (Interim Order, p. 3, and App. A, B). As is discussed in ComEd's Initial Brief, the agreed issues list did not include whether there should be further work to develop more uniform delivery services tariffs, whether through the creation of *pro forma* or "template" tariffs or otherwise, nor did it include whether another Docket should be initiated to work towards more uniform tariffs. That indicates a belief that such a Docket would be inappropriate or not worthwhile. None of the remaining eleven parties has stated that it supports MidAmerican's or Staff's proposals.

Under the Public Utilities Act, 220 ILCS 5/1-101, *et seq*. (the "Act"), the Commission must determine whether to initiate yet another Docket on the subject of uniformity, on the heels of the instant Docket, based on the law and the evidence in the record, and not based on a vote of the parties. 220 ILCS 5/10-103, 10-201(e)(iv). However, the fact that only four parties, one of which is not a market participant, have spoken in favor of such a follow-on Docket, while the seventeen other parties oppose or do not support such a Docket, is an important indication that many market participants believe that such a Docket would not be appropriate or would not be worthwhile, at least at this time. In this regard, it should be noted that only two customer groups even chose to appear in this Docket, and that one of those two groups ceased active participation once the parties entered into the Stipulation.

ComEd demonstrated in its Initial Brief, both as a matter of law and as a matter of fact, that uniformity of delivery services tariffs is not an end in and of itself. ComEd also showed that

the utilities have a right to file their own proposed delivery services tariffs and implementation plans, 220 ILCS 5/16-105, 16-108, and that there are ample policy reasons for utilities' having and exercising that right. ComEd also established that MidAmerican's and Staff's proposals are unlawful both procedurally and substantively in additional respects. The Initial Briefs of MidAmerican, Staff, the IIEC, and NewEnergy fail to negate any of those points.

That there is no groundswell of support for initiating yet another Docket to address uniformity, on the heels of the instant Docket, should be no surprise, in any event, because it simply is not a good idea. To begin with, as is discussed in ComEd's Initial Brief, the Commission made quite clear in its Initiating Order and again in its Interim Order that the Commission has not made any determination, or adopted any presumption, that there should be more uniform delivery services tariffs. Any arguments by the IIEC or NewEnergy that such a determination was made in any prior Docket are erroneous and irrelevant, and they also overlook that Commission Orders are not legal precedents or *res judicata.* *United Cities Gas Co. v. Illinois Commerce Comm'n*, 163 Ill. 2d 1, 22-23, 643 N.E.2d 719, 729 (1994); *Mississippi River Field Corp. v. Illinois Commerce Comm'n*, 1 Ill. 2d 509, 513, 116 N.E.2d 394, 396-97 (1953).

Furthermore, as all parties apparently agree, the Commission, in numerous prior Dockets over the past three years, has afforded utilities, actual and potential RESs and Metering Service Providers, customers, governmental entities, and Staff the opportunity to discuss, negotiate, and litigate the terms and conditions of the utilities' delivery services and the structure and language of the utilities' delivery services tariffs, and a host of steps towards uniformity already have been taken in those cases where uniformity made sense. In addition, as all parties apparently agree, the Staff-led workshops in this Docket were a success and resolved in detail a number of issues. Given what was accomplished in prior Dockets and in the Staff-led workshops in this Docket, it

is not reasonable to think that promptly commencing yet another Docket to pursue even more uniform delivery services tariffs would be productive, especially when MidAmerican, Staff, the IIEC, and NewEnergy all agree that there would have to be "deviations" from the *pro forma* or template tariffs. The Initial Briefs of MidAmerican, Staff, the IIEC, and NewEnergy inevitably fail to paper over that reality.

ComEd also showed in its Initial Brief that it simply is not true that developing *pro forma* or template delivery services tariffs will have any appreciable impact on the development of competition or the level of switching activity. ComEd's delivery services tariffs are complex, because of their subject matter and because they have to be complete, accurate, and precise. But, the tariffs also are understandable. In fact, no member of the IIEC has filed any complaint about ComEd's delivery services tariffs. The degree of competition in any service territory, or between service territories, is driven by a host of other more important factors, including price, not by the extent of uniformity in tariffs, and no party seriously can argue to the contrary. MidAmerican, Staff, the IIEC, and NewEnergy have not made even a minimal effort to provide any support for their assertions about the benefits of uniform delivery services tariffs, even though, if their assertions were correct, they would easily have been able to produce such evidence.

ComEd further showed in its Initial Brief that *pro forma* or template delivery services tariffs would impose serious costs, burdens, and risks on the utilities and, in many respects, on their customers. ComEd has approximately 3.5 million customers, approximately 300,000 of whom are eligible to take delivery services as of January 1, 2001. When ComEd's tariffs meet the road, the tariffs have to work for ComEd and for its customers. ComEd also demonstrated that MidAmerican's proposed *pro forma* tariffs, which are untested and have never been "workshopped", are grievously flawed. ComEd showed further that the suggested timing of

MidAmerican's and Staff's proposed follow-on Docket would be counter-productive and premature. Litigating *pro forma* or template tariffs in just the second year of the transition period, at the same time that the utilities are preparing for and litigating their residential delivery services tariffs and implementation plan cases, would be chaotic and imprudent. Finally, ComEd pointed out that even if a *pro forma* or template tariff development process were appropriate and justified, which it is not, then it would be ComEd's existing delivery services tariffs, not MidAmerican's proposed *pro forma* tariffs, that should be used as a starting point. The bottom line is that MidAmerican's and Staff's proposals not only violate the agreed issues list but are unlawful, unjustified, counter-productive, and ill-timed. The Initial Briefs of MidAmerican, Staff, the IIEC, and NewEnergy simply do not and cannot contravene any of those points.

The notion that the Commission should initiate a follow-on Docket to develop *pro forma* or template delivery services tariffs also stands in glaring contrast to another fact. There is only one subject as to which any party's Initial Brief argues that ComEd's delivery services tariffs should be altered: how the billing of unpaid balances and payment posting should be handled when a RES places a customer on the single billing option ("the SBO"). The notion that ComEd's delivery services tariffs should be re-litigated and re-written from top to bottom, which is what the follow-on Docket and *pro forma* or template tariffs would require as to ComEd and each of the other utilities, transparently is absurd when no party has made any objection to ComEd's delivery services tariffs except in relation to those two aspects of the SBO. That point bears repeating. MidAmerican, Staff, the IIEC, and NewEnergy are advocating a State-wide process that involves expedited litigation of every single word of ComEd's and the other utilities' delivery services tariffs when no party in this Docket is complaining about anything in ComEd's delivery services tariffs except for two aspects of the SBO. That is not reasonable.

As to the subject of the SBO, ComEd's Initial Brief showed that its approach to the billing of unpaid balances and to payment posting under the SBO is the approach that conforms to the Act, 220 ILCS 5/16-118(b), is consistent with ComEd's approved customer delivery services tariff and SBO rider, is consistent with the approved calculation of the SBO credit, and makes sense for all parties. NewEnergy, now joined by the IIEC, proposes that the RES-issued single bill should not include unpaid bundled services balances. It is entirely unclear whether NewEnergy and the IIEC also propose that any payments remitted by the RES to the utility on behalf of a customer on the SBO should be posted only to the utility's delivery services charges, although that probably is their proposal.[4] Staff has taken those positions, without advocating any specific proposal. The Attorney General's office has taken a similar position regarding billing, based solely on its interpretation of Section 16-118(b) of the Act, but has not expressly addressed payment posting. Only one party, MidAmerican, proposes that the RES-issued single bill should include neither unpaid bundled services balances nor delivery services balances incurred before the customer was served by its current RES. Only MidAmerican proposes that any payments remitted by the RES to the utility on behalf of a customer on the SBO should be posted only to the utility's delivery services charges incurred while the customer was served by its current RES.

The legal arguments of NewEnergy, the IIEC, Staff, the Attorney General's office, and MidAmerican try to transform the term "tariffed services" as used in Section 16-118(b) into a synonym for the term "delivery services". Their arguments cannot disguise that this reading makes no sense in context or in practice. Further, each of those parties overlooks that the term

[4] NewEnergy's and the IIEC's joint Initial Brief discusses the subject of the SBO at length [Initial Brief on Behalf [NewEnergy] and the [IIEC] ["NewEnergy/IIEC Init. Br."], pp. 3-20), but it does not contain any clear and unambiguous statement to that effect, and instead urges that the utilities should "separately account" for bundled services balances and delivery services balances without really explaining what that terminology is intended to mean. (*Id*. at p. 3, *et seq*.)

"tariffed services" is a defined term in the Act, 220 ILCS 5/16-102, and that it encompasses all of a utility's tariffed services (except for services declared competitive, which has no bearing here), and not just its delivery services. Also, even NewEnergy's, the IIEC's, Staff's, and the Attorney General's office's readings of Section 16-118(b) would bar MidAmerican's bizarre proposals.

The arguments of NewEnergy, the IIEC, Staff, and MidAmerican on the merits fare no better. It does not and never will make sense to assert that an approach to the single billing option as established by Section 16-118(b) that requires a customer to be sent not a single bill but two or more bills is preferable to an approach that results in the customer actually being sent a single bill. It also does not and never will make sense that a utility should be denied payment for its earlier-provided services while a RES receives payment for its later-provided services. No matter how many times the argument is repeated, the argument that the current approach forces a RES that elects the SBO to act as "an unpaid collection agency" is not just wrong, it is frivolous. The RES performs none of the functions of a collection agency.

The proposals to change billing and payment posting under the SBO are illegal, address supposed problems that, if they exist at all, are minimal and may easily be avoided by RESs in any of several different ways at little or no cost, lack merit, negate the single bill concept by requiring two or more bills to be sent to SBO customers, are contrary to the interests of customers, threaten the SBO credit, unnecessarily impose serious burdens, costs, and risks on utilities, and may impair ComEd's Instrument Funding Charges. The Initial Briefs of NewEnergy, the IIEC, Staff, the Attorney General's office, and MidAmerican fail to contravene any of those points. Finally, if any change were to be made at all, it is clear that ComEd's

alternative manual "work-around" proposal is superior to NewEnergy's, the IIEC's, Staff's, and MidAmerican's proposals and positions.

ARGUMENT

I.

ComEd Supports Steps Towards Greater Uniformity In Relation To Delivery Services Where Those Steps Make Sense

A. ComEd Has Worked Towards Uniformity Where It Makes Sense

ComEd appreciates the value of, and steadfastly has worked towards, uniformity in relation to delivery services where it makes sense. (ComEd Init. Br., pp. 4-5, 6-9). As ComEd demonstrated in its Initial Brief, establishing common business practices, not more uniform tariffs, is the key to permitting suppliers to do business in different service territories and across State lines. (*Id.* at pp. 6, 7). The Initial Briefs of MidAmerican, Staff, NewEnergy, and the IIEC do not and cannot show otherwise.

The steps towards greater uniformity advocated or accepted by ComEd in this Docket are steps that make sense, as discussed below. The proposals to initiate yet another Docket, on the heels of this Docket, to establish *pro forma* or template tariffs to not make sense, as discussed in Sections II and III of this Argument.

B. ComEd Supports Further Steps Toward Uniformity Where It Makes Sense

ComEd drafted and designed its customer and supplier delivery services tariffs for ease of use in light of the imperatives that the tariffs be complete, accurate, and precise. (ComEd Init. Br., p. 9). ComEd, in the spirit of compromise, nonetheless is willing to make the following changes to its customer and supplier delivery services tariffs, as indicated in its Initial Brief:

- ComEd has offered to expand its existing useful electronic bookmarks on its customer and supplier delivery services tariffs using uniform outlines that it developed with other major Illinois utilities.

- ComEd proposes to restructure its customer and supplier delivery service tariffs using those uniform outlines.

- ComEd is amenable to placing a tables of contents at the beginning of ComEd's customer and supplier delivery services tariffs.

- ComEd proposes to work with interested parties to develop common definitions and to place those definitions in its customer and supplier delivery services tariffs.

- ComEd is willing to place those definitions at the front of those tariffs, as Staff requested.

Despite the efforts of ComEd in prior Dockets and despite ComEd's above positions, MidAmerican, NewEnergy, and the IIEC insinuate that ComEd and other utilities resist uniformity in all of its forms. (MidAmerican Init. Br., p. 4-6; NewEnergy/IIEC Init. Br., p. 23-25). Yet, those parties must and do acknowledge that a great deal of uniformity in business processes and terms and conditions already exists, and often has been achieved by agreement. (*E.g.*, NewEnergy/IIEC Init. Br., p. 41). NewEnergy and the IIEC recognize that when they indicate that, taking into account the uniform business practices that exist and the prospect of developing common definitions, "the utilities are closer to *pro forma* delivery services tariffs than they realize." (*Id.*) In fact, if ComEd's proposals and compromises are approved, consumer and supplier delivery services tariffs will have uniform outlines, tables of contents, and common definitions found at the front of each tariff, as well as numerous common terms and conditions. Moreover, according to NewEnergy and the IIEC, "…the <u>appearance</u> of uniformity in Illinois … in many respects is just as important as <u>actual</u> uniformity." (NewEnergy/IIEC Init. Br., p. 34; *see also* Rea Direct ["Dir."], MidAmerican Ex. 1.0, p. 8). Based upon the amount of uniformity

that will exist, requiring a follow-on Docket to impose *pro forma* or template tariffs is requiring a monumental effort to gild the lily.

As one of its compromises in this Docket, ComEd -- working in conjunction with AmerenCIPS, AmerenUE, and Illinois Power Company ("IP") -- developed proposed uniform outlines for customer and supplier delivery services tariff that improve upon the outlines offered by Staff witness Peter Lazare in his direct testimony. (ComEd Init. Br., pp. 10-12). No evidence in the record calls into question the structure or content of ComEd's proposed uniform outlines. In fact, the uniform outlines proposed by ComEd are endorsed by several parties, including AmerenCIPS, AmerenUE, IP, and Peoples Energy Services Corporation, an Alternative Retail Electric Supplier. (Initial Post Hearing Brief ["Ameren Init. Br."], pp. 6-7; Initial Brief of IP ["IP Init. Br."], p. 5; Initial Brief of Peoples Energy Services Corporation ["Peoples Init. Br."], pp. 2-3). Other parties agreed to the concept of uniform outlines, and did not voice any objection to the to the structure or content of the uniform outlines presented by ComEd. (Initial Brief of Central Illinois Light Company ["CILCO Init. Br."], p. 5; MidAmerican Init. Br., pp. 19-21). In fact, the only party that had any specific objection to the structure or content of ComEd's proposed uniform outlines was Staff.

It should be noted that Staff's objections were not raised during the course of testimony or at the evidentiary hearing but, rather, appeared for the first time in Staff's Initial Brief. Staff's suggestions for "improvement" of ComEd's proposed uniform outlines are inappropriately considered by the Commission based upon the lack of any supporting evidence in the record and should be rejected. Staff recommended that the uniform outlines proposed by ComEd be adopted, with some variation. (Staff Init. Br., p. 21). However, ComEd's proposed uniform outlines contain an appropriate level of detail and are presented in a logical manner.

Consequently, Staff's recommended variations of ComEd's proposed uniform outlines are unnecessary and inappropriate.

1. The Commission Should Adopt ComEd's Proposed Uniform Customer Delivery Services Tariff Outline

Staff's only criticisms of ComEd's proposed uniform customer delivery service outline concern the section entitled "Electric Power and Energy Supply Options" and Staff's suggestion that a section on customer information be added. Staff suggests renaming the "Electric Power and Energy Supply Options" section the "Service Options" section and more broadly identifying the entire range of delivery services options. (Staff Init. Br., p. 21). Under Staff's reasoning, this section would include discussion of metering, single billing, partial service, and interim supply service. (*Id.*)

Staff's criticism is misplaced, however, in that the uniform outline proposed by ComEd and other utilities supports utilities' efforts to provide the appropriate level of detail about these related topics within a customer delivery services tariff. The goal of the uniform outlines was not to re-write the tariffs but, rather, to place existing tariff language under appropriate and consistent subject headings. References to metering, single billing, partial requirements and interim supply service already are included and logically placed in ComEd's customer delivery services tariff, Rate RCDS - Retail Customer Delivery Service-Nonresidential ("Rate RCDS"). (Alongi Rebuttal ["Reb."], ComEd Ex. 4.0, pp. 9-10). More detailed information concerning those topics can be found in ComEd's rate or rider that pertains to that particular type of service, which is cross-referenced in Rate RCDS.

Staff's recommendation inappropriately treats utility tariffs as a means to inform and educate delivery services customers as to all of the possible combinations of services, *i.e.*, as if they were customer education brochures. That is not the purpose of a tariff, however. A tariff is

the operative contract between a customer and a utility. The purpose of the tariff is to set forth the terms and conditions that apply to the particular service being provided under the tariff. (Alongi Reb., ComEd Ex. 4.0, p. 10). Using the tariff in the manner contemplated by Staff unnecessarily adds to the length of the tariff, detracts from the tariff's intended purpose, and potentially causes confusion for customers. (*Id.*)

For this same reason, Staff's suggestion that utilities' customer delivery services tariffs contain a section entitled "Customer Information" should be rejected. Customers are better educated through, for example, ComEd's customer handbook and its Open Access Non-Residential Implementation Plan, the latter of which, as noted by Staff witness Dr. Eric Schlaf, is "chocked full of information that is useful for suppliers of [*sic*] [and] customers." (Schlaf Transcript ["Tr."] 52). In addition, in the current age of restructuring, customers are bombarded with an unprecedented level of information, from a variety of sources, regarding customers' electric power and energy service options. (Alongi Reb., ComEd Ex. 4.0, p. 11). The information necessary for an understanding of ComEd's Rate RCDS already is included in an appropriate level of detail, and Staff's suggested modification is unwarranted.

Further, including a discussion of single billing and interim supply service is misleading within the customer delivery services tariff, as it suggests that these services are customer options. They are not. Single billing is not the choice of the customer but, rather, is the option of the RES that serves a particular customer. (Alongi Reb., ComEd Ex. 4.0, pp. 9-10). Similarly, interim supply service is not a customer's option. In brief, if a customer abruptly loses its supplier of electric power and energy, then the customer will automatically be placed on ComEd's Rider ISS-Interim Supply Service. (*Id.*) It is a safety yet, not an option to be consciously pursued. Staff's proposal fails to acknowledge those facts, and does not provide any basis for the

Commission to conclude that ComEd's treatment of these topics is in any way inadequate. In sum, ComEd provides the most coherent, useful, and appropriate proposal.

2. The Commission Should Adopt ComEd's Proposed Uniform Supplier Delivery Services Tariff Outline

Staff recommended only two changes to ComEd's proposed uniform outline for supplier delivery services tariffs. Staff suggested that sections entitled "Electronic Data Exchange" and "Load Profiling" be inserted into the outline. (Staff Init. Br., p. 23). That recommendation is inappropriate, for a number of reasons. First, elements of electronic exchange of data naturally fall into a variety of section headings under ComEd's proposed outlines: Definitions; Application for and Commencement of Services; Technical and Operational Requirements; and Miscellaneous General Provisions. Issues relating to load profiling would naturally fall under Technical and Operational Requirements. Second, there has been no evidence that RESs desire a separate heading for either topic. Not one RES has indicated a specific requirement for those subject headings. Finally, those topics can be found in ComEd's Open Access Non-Residential Implementation Plan, which was approved by the Commission in Docket No. 99-0117, as well as in ComEd's supplier guide. As such, there is no basis for Staff's suggested revisions to uniform outlines that are supported by the majority of interested parties, and have been opposed by no customer group or RES.

II. To Develop *Pro Forma* Tariffs Is Unlawful, Unwarranted, Unwise, And Ill-Timed

Since MidAmerican sprang its *pro forma* tariffs proposal, MidAmerican, NewEnergy, and the IIEC have talked about the purported "benefits" of *pro forma* tariffs in the abstract, without providing a shred of substantiating evidence. Their Initial Briefs have proven to be no

exception.[5] Those parties do not cite to any meaningful evidentiary support for their positions and, perhaps recognizing that no substantive evidence exists, they rarely cite even to their own testimony. Even more telling is the fact that those parties fail to cite to the ComEd witnesses that criticized their proposal, much less address their criticisms.

MidAmerican proposes that the Commission should, shortly after the conclusion of the instant Docket, initiate yet another Docket on the subject of uniform tariffs, to be held at the same time the utilities are preparing/litigating their proposed residential delivery services tariffs and implementation plans and making revisions to existing delivery services tariffs. MidAmerican's proposal that the Commission initiate such a follow-on Docket on the heels of the instant Docket has been expressly opposed by six parties, including four utilities other than ComEd and Peoples Energy Service Corporation, an Alternative Retail Electric Supplier. Staff's proposal differs significantly from MidAmerican's proposal. The remaining eleven parties apparently oppose, or at least do not support, MidAmerican's proposal, as discussed in the Introduction to this Reply Brief.

MidAmerican further proposes that the Commission adopt MidAmerican's proposed *pro forma* delivery services tariffs and Metering Provider Service tariff in the instant Docket, to be used as a "starting point" for the proposed new Docket. Staff diverges from MidAmerican on that point, leaving only two parties, NewEnergy and the IIEC, that support this aspect of MidAmerican's proposal. MidAmerican's proposal falls well outside the scope of issues to be litigated in this Docket and is unlawful, unjustified, and counter-productive, and ill-timed.

[5] Though NewEnergy joined the IIEC at the briefing stage, NewEnergy witness Kennan Walsh's testimony on the topic of *pro forma* tariffs consisted of a scant eight lines of text, did not identify any alleged benefit of *pro forma* tariffs, and did not address the proposed *pro forma* tariffs that MidAmerican actually presented in the Docket. (Walsh Dir,. NewEnergy Ex. KJW-1, pp. 18-19; Rea Tr. 340).

A. MidAmerican's Proposal Is Illegal

In its Initial Brief, ComEd demonstrated that MidAmerican's proposal is illegal, for numerous reasons, including the following:

- In violation of its due process rights, ComEd was not provided adequate notice that uniform delivery services tariffs would be addressed in this Docket.
- Contrary to due process, ComEd was not provided a meaningful opportunity to be heard as to that subject.
- MidAmerican's proposal violates the utilities' long-established right to propose their own tariffs under the Public Utilities Act, 220 ILCS 5116-101, *et seq*. (the "Act").
- MidAmerican's proposal that the follow-on Docket be concluded within five to seven months unfairly denies utilities the right to a full and fair hearing.
- MidAmerican's proposal places an unlawful burden on utilities in future rate cases by requiring that the utility seeking a "deviation" from the *pro forma* tariffs would be required to prove not only that the utility's proposed tariffs are just and reasonable, which is all the Act requires, 220 ILCS 5/9-201(c), 16-108, but also that the *pro forma* tariff language should not apply to the utility and its customers.
- Claims that MidAmerican should not have to justify its own proposal violates the Commission's requirement to make decisions based exclusively upon the evidence in the record. *E.g.*, 220 ILCS 5/10-103, 10-201(e)(iv).

Nothing in any partys Initial Brief appropriately responds to any of the concerns listed above. [6]

MidAmerican and NewEnergy/IIEC claim that notice of the development of *pro forma* tariffs in this Docket was given to the parties, based upon the Commission's indication of its desire to consider uniformity with respect to a narrow range of issues. (MidAmerican Init. Br., pp. 11-13; NewEnergy/IIEC Init. Br., p. 30-32). That claim is in direct conflict with the actual language of the Initiating and Interim Orders, however, and the attachments thereto, and to the Staff report. First, the Commission limited the issues for consideration in this Docket to particular questions, directed to the list attached to the Initiating Order, none of which relate to

discussion of the development or implementation of *pro forma* or uniform tariffs. (Initiating Order, App.) Neither was it the impression of Staff that the Commission wanted to see uniform tariffs come out of this proceeding. (Schlaf Tr. at 120). Second, the Commission was not, by including a particular topic among the list for discussion, intimating that uniformity was either necessary or desirable. To the contrary, the Commission specifically stated the following:

> The Commission wishes to clarify that it does not, by including any issue in the Appendix to this Order, intend to establish any presumption that uniformity among electric utility tariffs is or is not appropriate as to that issue.

(Initiating Order, p. 3).

From that initial list of permissible topics, the parties subsequently agreed to a number of questions that were to be the permitted candidates for litigation in this Docket, as stated in the Stipulation and the agreed issues list attached to the Interim Order. (Interim Order, p. 3, and App. A, B). The development or implementation of *pro forma* or uniform tariffs is not among the list of issues that could be litigated. (*Id.;* Schlaf Tr. 41). Nor was the initiation of a follow-on Docket addressing uniformity among the possible issues. (Interim Order, App. A, B). If MidAmerican, NewEnergy, or the IIEC desired to challenge each and every utility delivery service tariff provision, then those parties could and should have stated their intent early on. By signing the Stipulation, they took the vast majority of tariff provisions off the table. Those parties cannot and should not be permitted to manipulate the Commission and the workshop and litigation processes.

MidAmerican claims that utilities had an adequate opportunity to respond because MidAmerican presented its proposed *pro forma* tariffs in its direct testimony. (MidAmerican

[6] Other than grouping together each of the underlying legal issues raised by ComEd and irresponsibly calling them collectively "nonsense", MidAmerican failed to address any of these fundamental legal interests in its Reply Brief. (MidAmerican Rep. Br., pp. 5-6).

Init. Br., p. 12). In violation of its due process rights, ComEd was not provided notice and a meaningful opportunity to be heard, because, among other things, there was no time to develop alternative proposed tariffs or language. U.S. Const., amend. XIV; Ill. Const., art. I, § 2. Staff recognized the fact that parties other than MidAmerican were not presented with the opportunity to present their own proposed *pro forma* tariffs in this proceeding. (Staff Init. Br., p. 15). Further, ComEd did not have sufficient opportunity to adequately review the *pro forma* tariffs that were actually presented by MidAmerican. For example, ComEd lacked sufficient time to analyze the proposed tariffs with a view toward transmission-related concerns, and to business processes or information systems modifications that would be required if the proposed tariffs were imposed on ComEd. (Alongi Reb., ComEd Ex. 4.0, pp. 22-24; Alongi Tr. 434). The fact that ComEd's Distribution Pricing department identified a host of flaws in MidAmerican's proposed *pro forma* tariffs does not alter that ComEd's review was rushed and limited in scope.

MidAmerican pays lip service to a utility's right to propose its own tariffs (MidAmerican Init. Br., p. 10-11), a right which is grounded in the Act. 220 ILCS 5/9-201, 16-108. Unbelievably, MidAmerican suggests that the Commission nevertheless can have "preconceived notions or predetermined notions of what [the utility's] tariff should say." (MidAmerican Init. Br., p. 10-11). Not surprisingly, that sentiment is found nowhere in the law, and violates both fundamental principles of due process and the Act, under which a Commission Order must be based exclusively on the evidence in the record, 220 ILCS 5/10-103, 10-201. The Commission does not have the authority to mandate uniform utility delivery services tariffs, a conclusion that is borne out by a review of the Act.

The Act provides that utilities file tariffs which are then either passed to file or suspended. 220 ILCS 5/9-201, 16-108. It is left to utilities to write those tariffs. The

Commission has the responsibility to review the utility's proposed tariffs and to either approve them if they are just and reasonable, or to direct necessary modifications. 220 ILCS 5/9-201, 16-108. (Juracek Sur., ComEd Ex. 6.0, pp. 5-6). Indeed, had the legislature wanted the Commission to have the power to create uniform delivery services tariffs, it could have granted the Commission that authority (setting aside constitutional issues). For example, the act expressly gave the Commission the authority to require that ARES adopt uniform disclosure forms for prices, as well as terms and conditions. 220 ILCS 5/16-117(h). The Act gave the Commission no authority to impose *pro forma* or uniform tariffs.

The Commission has limited jurisdiction under the Act. 220 ILCS 5/10-201(e)(iv). Moreover, because the Act is in derogation of common law, no requirement to be imposed on public utilities can be read into the Act by intendment or implication. *Turgeon v. Commonwealth Edison Co.*, 258 Ill. App. 3d 234, 251, 630 N.E.2d 1318, 1330 (2d Dist.), *appeal denied*, 157 Ill.2d 524, 642 N.E.2d 1305 (1994).

Neither MidAmerican nor the IIEC and NewEnergy provide any meaningful discussion of the limited period of time in which the follow-on Docket would occur. The IIEC and NewEnergy recommend that the follow-on Docket begin after the conclusion of the current Docket, on or about April 1, 2001, and conclude by September 1, 2001, a mere five months. (IIEC/NewEnergy Init. Br., p. 42). MidAmerican's proposal also begins after April 1, 2001, though its proposed conclusion varies anywhere from September 1, 2001, through November of 2001. (MidAmerican Init. Br., p. 6; MidAmerican Rep. Br., p. 6). The only mention of the enormous amount of work that would be required in such a "rocket docket" are glib remarks such as "[utilities] have resources." (IIEC/NewEnergy Init. Br., p. 43). Those parties miss the point. Whether or not MidAmerican's proposed follow-on Docket coincides with the utilities'

preparation/litigation of their respective residential delivery service tariffs and implementation plan cases, the proposed time allotted for the proposed follow-on Docket violates the utilities' due process rights in denying them the opportunity for meaningful and thoughtful consideration of the issues.

No party has suggested that all of the utilities' residential delivery services tariffs and implementation plan cases should be consolidated. That is not surprising, because consolidating those would be a terrible idea. (Alongi Reb., ComEd Ex. 40, p. 22; Juracek Sur., ComEd Ex. 6.0, pp. 9-10). Yet, the follow-on Docket as proposed would, for all intents and purposes, become a State-wide rate case to be conducted in a maximum of seven months, including any workshops. A rate case for a single utility generally occurs over an eleven-month period. (Rea Tr. 337-38). In the follow-on Docket, each party could present a competing proposal, each provision of which would require evaluation and litigation to determine whether the proposals were just and reasonable. (Rea Tr. 331-323, 441). The instant Docket, which involved a narrow number of issues, took five months for the litigation and briefing stage alone, with months of workshops prior to the litigation phase. The proposed follow-on Docket would be exponentially more complex. In order to assess whether a particular proposal was just and reasonable, the following issues, among others, would have to be agreed upon or litigated as to each and every tariff provision: (1) the general applicability of each term and condition as to the various utilities (and any proposed "deviations"); (2) the costs of each such proposal; (3) who would pay for the costs that utilities would incur; (4) and the particular terminology to be applied to each of the nine service territories and groups of customers. (Schlaf Reb., Staff Ex. 3, p. 11; Juracek Sur., ComEd Ex. 6.0, pp. 9-10).

In addition to practical considerations, consolidation in such a manner raises complex legal issues. First, the General Assembly, in directing that each utility file its own delivery services tariffs, did not contemplate consolidation. 220 ILCS 5/16-105, 16-108. Second, maintaining separate Dockets facilitates the creation of a proper record as to each utility's tariffs, the protection of procedural rights, e.g., the utilities' right to cross-examination, 83 Ill. Admin Code § 200.640(c); 5 ILCS 100/10-40(b); *Balmoral Racing Club, Inc. v. Illinois Racing Board*, 151 Ill. 2d 367, 603 N.E.2d 489 (1992), and the preparation of Orders that are sustainable on Appeal. 220 ILCS 5/10-201. Third, settlement of issues will be impossible as to even one utility if any party in a consolidated Docket objects. *Business and Professional People for the Public Interest v. Illinois Commerce Commission*, 136 Ill. 2d 192, 55 N.E.2d 693 (1990). Compressing a State-wide rate case into a five-to-seven month proceeding would be both a legal and practical impossibility.

In addition, the proposed scheme may violate the due process rights of those parties that are not participants to the follow-on Docket but who are parties to the residential delivery services tariffs and implementation plan cases. Under the MidAmerican proposal, *pro forma* tariffs would be created in a follow-on Docket, to be imposed on the utility during the utility's non-residuary delivery services tariff any implementation plan case at a later date. That ignores the likelihood that entities not participating in the follow-on Docket may seek to intervene in a utility's individual rate case, which they are lawfully entitled to do. With limited exceptions not relevant here, an entity not party to a proceeding cannot be bound by its outcome. Accordingly, an entity not a party to the follow-on Docket could legally require re-litigation as to every provision of the *pro forma* tariffs. That would serve to further increase the burden and expense of MidAmerican's proposal. Not only that, but the Commission Order in the follow-on Docket

will not be a legal precedent or *res judicata.* *United Cities Gas Co. v. Illinois Commerce Comm'n*, 163 Ill. 2d 1, 22-23, 643 N.E.2d 719, 729 (1994); *Mississippi River Field Corp. v. Illinois Commerce* Comm'n, 1 Ill. 2d 509, 513, 116 N.E.2d 394, 396-97 (1953).

MidAmerican asserts that its proposal does not impose terms and conditions on utilities because utilities can seek approval of "deviations" from the *pro forma* tariffs. (MidAmerican Init. Br., p. 19). However, the proposed process places additional and unlawful burdens on utilities in all future delivery services tariffs proceedings. According to the Act, a utility has the initial burden of establishing that its proposed tariffs are just and reasonable. 220 ILCS 5/9-201(c), 16-108. Under MidAmerican's proposal, a utility seeking a "deviation" from the *pro forma* tariff would be required to prove not only that the utility's proposed tariff provisions were just and reasonable, but that the *pro forma* tariff language should specifically not apply to the utility. (Rea Tr. 332-34). That additional requirement that MidAmerican seeks to impose does not exist in the Act, is unlawful, and is beyond the Commission's jurisdiction and authority.

Further, MidAmerican's proposal fails to appropriately apply the burden of proof. In complaint cases before the Commission, the burden of proof is on a party that is challenging a particular tariff that the Commission has found to be just and reasonable. MidAmerican effectively is challenging the utility's already approved delivery services tariffs, similar to a complaint case. MidAmerican's proposal fails to recognize burdens of proof as they exist in Commission practice, and impose additional and unlawful burdens upon utilities.

MidAmerican and the IIEC and NewEnergy make repeated references to previous Dockets and Orders. (MidAmerican Init. Br., pp. 3-4, 11-12; 23-27; NewEnergy/IIEC Init. Br., pp. 26-30). Those parties infer that Orders in other Dockets relating to particular tariff provisions and the Commission's prior rejection of *pro forma* tariffs somehow are relevant to the

instant Docket and that they advance or support the cause of *pro forma* tariffs. They do neither. Again, prior Commission Orders are not legal precedents or *res judicata.* Similarly, whether FERC transmission tariffs were adopted after a multi-year process and whether State legislatures enacted a Uniform Commercial Code (NewEnergy/IIEC Init. Br., p. 31) has absolutely no bearing on the discussion of *pro forma* delivery services tariffs in Illinois. Those references illustrate the fact that the proponents of *pro forma* tariffs are grasping at straws, attempting to obscure the fact that they have presented no evidence to support their position in this Docket. Moreover, the Initiating Order and the Interim Order are to the contrary, and obviously they do apply here.

Proponents of *pro forma* tariffs suggest that they should not have any burden to justify their proposal, but that the Commission should impose new rates on utilities as a "policy" decision. (MidAmerican Init. Br., p. 16). The Commission must weigh the benefits of a given approach with its associated costs, risks, and burdens and, in doing so, must be guided strictly by the evidence in the record in the current Docket. *E.g.*, 220 ILCS 5/9-201(c), 10-103, 10-201(e)(iv). (*E.g.*, Clair Dir., ComEd Ex. 1.0, p. 3). Despite the desires of MidAmerican, the IIEC, and NewEnergy, the Commission cannot and should not ignore an evidentiary record that fails to show any evidence of benefits of *pro forma* tariffs, while at the same time providing overwhelming evidence regarding the costs, burdens, and risks in imposing *pro forma* tariffs.

B. MidAmerican's Proposal Is Not Supported By The Evidence

As noted above, as with any other Commission decision, a proposal to develop and implement *pro forma* tariffs must be carefully scrutinized, as to jurisdiction and legality and then weighing any ascertainable benefits of *pro forma* tariffs against the burdens, costs, and risks of such an endeavor. ComEd's Initial Brief demonstrated the following:

- ComEd's customer and supplier delivery services tariffs already are understandable to customers and RESs, and are appropriately crafted.

- Customers and RESs already are able to compare delivery services tariffs of the utilities.

- Proponents of *pro forma* tariffs have failed to show that competition in Illinois has been affected in any way due to any lack of uniformity of delivery services tariffs.

1. ComEd Delivery Services Tariffs Are Understandable, And Are Appropriately Crafted

Remarkably, and quite recklessly, the IIEC and NewEnergy now claim that the Commission should find that utilities' delivery services tariffs are not just and reasonable. (NewEnergy/IIEC Init. Br., p. 37). In addition to claims of being unjust and unreasonable, MidAmerican further asserts that the utilities' delivery services tariffs are discriminatory and preferential. (MidAmerican Init. Br., p. 31). Those claims are totally unsupported by the evidence in the record and transparently seek to cloak those parties' positions with an undeserved aura of legal importance. Of course, the Commission found ComEd's customer and supplier delivery services tariffs to be just and reasonable, and approved them in Docket No. 99-0117. (Alongi Sur., ComEd Ex. 8.0, p. 5). Also, ComEd's service territory has unsurpassed levels of competition and switching activity, and its tariffs have repeatedly been shown to work. (ComEd Init. Br., p. 21). No party has presented any evidence upon which the Commission could reasonably reach a different conclusion than its previous Orders.

Proponents of *pro forma* tariffs claim, without any evidence to support their position, that customers will benefit from *pro forma* tariffs. (NewEnergy/IIEC Init. Br., p. 32; MidAmerican Init. Br., p. 7-10). Significantly, no customer testified in this Docket that it was unable to understand ComEd's customer delivery service tariffs. Nor has there been a single formal complaint filed by an IIEC member over the meaning or application of ComEd's delivery

services tariffs. (Alongi Sur., ComEd Ex. 8.0, p. 5). Customers already have a vast array of sources of information to clarify any provision of a utility delivery services tariff that they do not understand. (*E.g.*, Juracek Sur., ComEd Ex. 6.0, pp. 15-16). For example, customers can look to ComEd's implementation plan and its customer handbook. (*Id.*) Or, as IIEC witness Robert Stephens does when he has a question, the customer can call the utility. (Stephens Tr. at 653).

The IIEC and NewEnergy indicate that customers that operate in multiple service territories would find *pro forma* tariffs useful. (NewEnergy/IIEC Init. Br., p. 33-34). Approximately 300,000 non-residential customers operate in ComEd's service territory alone. (Alongi Reb., ComEd Ex. 4.0, p. 17). However, only nine customers have expressed any interest in *pro forma* tariffs in this Docket, and Mr. Stephens was unable to say whether any of those customers operates in ComEd's service territory. (Stephens Tr. 652-53). The remaining customers either operate in a single service territory or apparently are unconcerned with uniformity of utilities' delivery services tariffs, as was confirmed in the Uniform Business Practices process. (ComEd Init. Br., pp. 6, 7). ComEd's customer and supplier delivery services tariffs facilitate easy comparisons of ComEd's bundled services tariffs to its delivery services tariffs. (Alongi Dir., ComEd Ex. 2.0, pp. 6-7; Juracek Sur., ComEd Ex. 6.0, pp. 15-16). That is important for customers that operate within a single service territory, because those customers will make decisions about their supplier of electric power and energy, in part, by comparing the utility's bundled services tariffs to its delivery services tariffs. (*Id.*; Carls Reb., Ameren Ex., p. 3). MidAmerican, the IIEC, and NewEnergy dismiss that need. (MidAmerican Init. Br., p. 7; NewEnergy/IIEC Init. Br., p. 32-33). The fact that those parties believe customers are not interested in comparing utility terms and conditions at all but, rather, are concerned only with

evaluating the options provided by RESs, indicates that customers are concerned with only one thing -- price, not with uniform tariffs.

2. Uniform Tariffs Will Not Enhance Competition

Proponents of *pro forma* tariffs assert that a supposed lack of competition throughout the State suggests a need for uniformity. (NewEnergy/IIEC Init. Br., p. 22). That assertion ignores the fact that a good deal of competition exists in ComEd's service territory, particularly considering the amount of time in which the market has been opened. (ComEd Init. Br., p. 21). Multiple RESs have entered the market and are supplying electric power and energy. (*Id.*) Customer switching volume in ComEd's service territory also has been impressive. (*Id.*)

Proponents of *pro forma* delivery services tariffs agree that there are a number of factors that significantly affect competition in a given service territory -- all of which are entirely unrelated to uniformity of tariffs, many of which are outside the jurisdiction of the Commission. (MidAmerican Init. Br., pp. 15-16). Significant factors that those parties identified as affecting competition include the following: (1) low rates in some service territories, making competition less attractive; (2) Federal Energy Regulatory Commission ("FERC") Open Access Transmission Tariff ("OATT") energy imbalance tariffs that are unsatisfactory or prohibitive to some RESs and customers; (3) special contracts with larger customers, thereby decreasing the pool of desirable potential customers; (4) transition charges; (5) the current volatility of the wholesale market; (6) the fact that a limited pool of customers currently exist in Illinois prior to the opening of the residential market; (7) the ability of a competitor to site and build independent generation; (8) customer density; and (9) load shape distribution. (Schlaf Tr. 70-74; Stephens Tr. 651-652; Rea Tr. 355-356; *see also* Juracek Sur., ComEd Ex. 6.0, p. 8). There is no evidence that, in light

of those factors, *pro forma* customer and supplier delivery services tariffs will have even a negligible effect on competition within Illinois.

Proponents of *pro forma* tariffs claim that they will reduce overhead costs and expenses for RESs, thereby tacitly abandoning any pretense that RESs do not or cannot understand utilities' delivery services tariffs. (NewEnergy/IIEC Init. Br., pp. 33; MidAmerican Init. Br., pp. 7-10). As with the entirety of this Docket, the proponents of *pro forma* tariffs make statements as to purported "benefits" without the benefit of any evidence whatsoever. Despite continuing demands for quantification of the alleged benefits, proponents of *pro forma* tariffs fail to produce any such evidence. Those parties admit that they have failed to provide any quantification of the alleged administrative burdens or costs that are required to become familiar with multiple tariffs, and failed to provide any evidence that any potential RES failed to enter the Illinois market or any service territory due to lack of uniform delivery services tariffs. (MidAmerican Init. Br., p. 16). This is not surprising, given the fact that not all RESs have an interest in developing *pro forma* delivery services tariffs now, as is evident from reading the words of Peoples Energy Services Corporation, an Alternative Retail Electric Supplier. As Peoples Energy Services Corporation stated when addressing the subject of developing and implementing *pro forma* delivery services tariffs at this time, "[t]here are more useful issues and areas for PE Services to devote its limited resources in order to continue to develop customer choice." (Peoples Init. Br., p. 3).

C. *Pro Forma* Tariffs Are Unwise

ComEd, in its Initial Brief, demonstrated that the proponents of *pro forma* delivery services tariffs have failed to prove that the purported benefits of *pro forma* delivery services tariffs outweigh the costs, risks and burdens of such an endeavor. ComEd showed that:

- *Pro forma* tariffs impose potentially substantial costs on utilities in changing business process, training costs, and information system costs.
- MidAmerican's proposed *pro forma* tariffs contain extensive errors, omissions and inconsistencies and are an inappropriate starting point at any time.

Nothing in the Initial Briefs of any party altered those facts.

1. *Pro Forma* Tariffs Impose Considerable Costs, Burdens, And Risks

Proponents of *pro forma* tariffs fail to acknowledge or address the crucial role that tariffs play in utility management and operations. ComEd's tariffs govern its relationship with its customers, and generally provide the single authority for ComEd to collect charges and take other actions, as appropriate. (Juracek Sur., ComEd Ex. 6.0, pp. 8-9). Based upon the role of tariffs, it is imperative that they be complete, accurate, and precise. (*Id.*; Alongi Reb., ComEd Ex. 4.0, p. 17). A *pro forma* tariff that is not be drafted with the same concerns in mind can in fact create confusion and disputes. (Juracek Sur., ComEd Ex. 6.0, p. 9; Alongi Reb., ComEd Ex. 4.0, pp. 17-18). Use of a *pro forma* tariff that encourages or causes disputes would be particularly disastrous in ComEd's service territory. (Juracek Sur., ComEd Ex. 6.0, p. 9; Schlaf Tr. 35). Based on ComEd's customer population of 3.5 million customers, including 300,000 nonresidential customers, if confusing or ambiguous tariff language caused confusion for only one-tenth of one percent of ComEd customers, 3,500 customers would be experiencing problems they did not have before. (Juracek Sur., ComEd Ex. 6.0, p. 9).

Proponents of *pro forma* tariffs assert that utilities would experience minimal impact on business processes and costs, based upon a utility's ability to request "deviations" from the *pro forma* tariffs. (NewEnergy/IIEC Init. Br., pp. 43-48; MidAmerican Init. Br., pp. 17-19). Of course, the fact that a utility could seek a deviation would not mean that a deviation would be granted. In addition, those parties fail to recognize that ComEd's current customer and supplier delivery services tariffs completely, accurately, and precisely reflect its particular business process and information systems. (Alongi Reb., ComEd Ex. 4.0, pp. 17-18). Consequently, there is no need to change the tariffs to something that these same parties acknowledge may require new or different business processes, which could require substantial costs (Stephens Tr. 663-64; Schlaf Tr. 34), and which are legally and practically untested, and have not even been "workshopped." On the other hand, if "deviations" are to be granted as liberally as proponents of *pro forma* tariffs now would have the utilities believe (NewEnergy/IIEC Init. Br., p. 39-40, 42), then uniformity of tariff provisions among utilities quickly would disappear, making the whole process an even more colossal waste of resources and time.

Proponents of *pro forma* tariffs suggest that the Commission should be unconcerned about costs, claiming that utilities can seek rate relief. (NewEnergy/IIEC Init. Br., p. 42). First, there is no guarantee that utilities will necessarily receive the rate relief requested, especially if the Commission continues to deny utilities full recovery of non-recurring implementation costs as it did in Docket No. 99-0013 (now on appeal). Second, if in fact the utility's request is approved, then costs will be passed along to customers, and charges will increase. That result flies in the face of *pro forma* tariffs proponents' own pronouncements about the importance of ensuring that costs for customer are no higher than necessary. (*E.g.*, IIEC/NewEnergy Init. Br.,

p. 25-26). By imposing new and different terms and conditions on utilities, *pro forma* tariffs would harm, rather than help, customers.

2. MidAmerican's Proposed *Pro Forma* Tariffs Are Severely Flawed

In addition to advocating the concept of *pro forma* tariffs, MidAmerican proposed that the Commission adopt particular *pro forma* tariffs drafted and proposed by MidAmerican in this Docket and that the proposed *pro forma* tariffs be used as a "starting point" in MidAmerican's proposed follow-on Docket. (Rea Dir., MidAmerican Ex. 1.0, pp. 2-3, 12; Exs. 1.1, 1.2, 1.3). In addition to the general problems with *pro forma* tariffs and the proposed timing for the development and implementation of *pro forma* tariffs as described in Section II of this Argument, the specific *pro forma* tariffs proposed by MidAmerican should not be adopted by the Commission in this Docket (or ever), and are not an effective starting point for any proceeding.

The IIEC and NewEnergy indicate that utilities have not demonstrated how current utility business processes would be affected by MidAmerican's proposed *pro forma* tariffs. (NewEnergy/IIEC Init. Br., p. 41). The fact that utilities have not had adequate time to analyze the various business processes, distribution issues, and information systems that would be affected is just one of the many legal and practical problems with MidAmerican's proposed tariffs, as discussed earlier. However, MidAmerican itself acknowledges that at least three issues could significantly alter business practices, workflows, or computer systems. (Rea Sur., MidAmerican Ex. 5.0, p. 33). In addition, the IIEC and NewEnergy admit that new business processes that have not been tested and would likely be found to be unworkable may be imposed upon utilities. (Stephens Reb., IIEC Ex., p. 5). There is no basis for requiring utilities to modify their terms and conditions from something that is currently working as in ComEd's service territory to terms and conditions that are untested and potentially unworkable, and that require substantial expense.

Proponents of *pro forma* tariffs assert that MidAmerican's *pro forma* tariffs are a good "starting point". (IIEC/NewEnergy Init. Br., p. 38-40; MidAmerican Init. Br., p. 6-7). Those parties fail to acknowledge that the proposed *pro forma* tariffs have not been found to be just and reasonable by the Commission. (Juracek Sur., ComEd Ex. 6.0, p. 6). For that matter, the proposed *pro forma* tariffs have not even found to be legal. (*Id*.) Remarkably, MidAmerican still claims that its proposed *pro forma* tariffs are suitable for statewide application. (MidAmerican Reply Br., p. 4). To the contrary, MidAmerican's proposed *pro forma* tariffs have not been shown to be suitable for any single utility, let alone fit for statewide application. Notably, MidAmerican itself indicated that, if the Commission adopts the proposed *pro forma* tariffs, then MidAmerican will seek unspecified deviations from the very *pro forma* tariffs that it has proposed. (*E.g.*, Rea Reb., MidAmerican Ex. 3.0, pp. 7-8). Without evidence demonstrating that the proposed *pro forma* tariffs meet the legal requirements provided for by the Act and that they are suitable for all electric utilities and their customers, the Commission cannot and should not adopt the proposed *pro forma* tariffs.

MidAmerican claims that many of ComEd's criticisms of MidAmerican's proposed *pro forma* tariffs concern punctuation, grammar, and other "nonsubstantive" enhancements. (MidAmerican Reply Br., p. 6). Of course, MidAmerican does not and cannot contend that all comments, or even the majority of the comments, fall into that category. Notably, MidAmerican made no attempt to cure any of the deficiencies of the proposed *pro forma* tariffs in the weeks that passed between receipt of the comments on the proposed *pro forma* tariffs and the hearings in this Docket. (Rea Tr. 353). In addition, the mere fact that 44 pages of errors, omissions and inconsistencies were identified through a brief and limited review (Alongi Reb., ComEd Ex. 4.0, pp. 23-24; ComEd Exs. 4.3, 4.4, 4.5) in and of itself demonstrates the haphazard manner in

which MidAmerican crafted the proposed *pro forma* delivery services tariffs that it now seeks to impose on every utility.

D. *Pro Forma* Tariffs Should Not Be Considered Now

In addition to the other factors that militate against *pro forma* delivery service tariffs, ComEd's Initial Brief showed that now is a uniquely bad time to consider the development or implementation of *pro forma* tariffs. (ComEd Init. Br., pp. 31-33). Proponents of *pro forma* delivery services tariffs appear unconcerned with the critical question of timing. (NewEnergy/IIEC Init. Br., pp. 49-51; MidAmerican Init. Br., pp. 4-6). Their attitude ignores the relative infancy of open access and the very real demands imposed upon utilities and other parties to prepare for and litigate the utilities' upcoming residential delivery services tariffs and implementation plan cases. They cannot credibly ignore the practical concerns that led the legislature to adopt a six-year transition period.

MidAmerican contends that uniformity should be imposed before competition is extended to residential customers. (MidAmerican Rep. Br., p. 3). Given the limited amount of time that the market has been open, there is still much that is not known. (Juracek Sur., ComEd Ex. 6.0, pp. 7-8). MidAmerican acknowledges that the extent of the parties' experience in the competitive marketplace is less than many parties were contemplating. (MidAmerican Rep. Br., p. 3). In addition, processes pertaining to residential customers have not yet been developed. (Juracek Sur., ComEd Ex. 6.0, pp. 7-8). Attempts to implement changes prematurely may result in costly mistakes that ultimately hinder the development of the market.

Proponents of *pro forma* tariffs also ignore the current resource demands placed on utilities. Utilities must be given the necessary time to prepare for the next stage of the transition, the open access of electric power and energy for residential customers. (Alongi Reb., ComEd

Ex. 4.0, pp. 20-21; Juracek Sur., ComEd Ex. 6.0, pp. 9-10). When reading the apparently applicable provisions of the Act together, utilities would appear to be required by law to file their residential delivery service tariffs and implementation plans and their proposed revisions to existing delivery service tariffs no later June 3, 2001, a Sunday, in light of how long tariffs may be suspended by the Commission, unless the Commission is not to be afforded the entire period. 220 ILCS 5/9-201(a) and (b); 16-104(e). Regardless, the utilities' proposed residential delivery services implementation plans must be filed by August 1, 2001. 220 ILCS 5/16-105. The proposed tariffs, as a practical matter, need to be filed contemporaneously. (*E.g.*, Schlaf Tr. 47). MidAmerican recognizes the fact that modifying tariffs may require modification to utilities' implementation plans and other resources, such as customer and supplier handbooks. (MidAmerican Init. Br., p. 16-17). To divert time and resources away from these efforts would hinder the efforts of utilities, Staff, and the Commission with respect to the upcoming rate cases. (*Id*.)

Some parties claim that the Commission must implement *pro forma* delivery services tariffs now because the longer the existing delivery services tariffs are in place, the more difficult it will be for utilities to modify those tariffs. (MidAmerican Init. Br., p. 4). However, no utility indicated that it would be more difficult or expensive to change tariffs at a later date. (Schlaf Tr. 50). In fact, the evidence is to the contrary. (Juracek Sur., ComEd Ex. 6.0, pp. 24-25).

E. If *Pro Forma* Tariffs Are To Be Considered, Then ComEd's Existing Tariffs Should Be Used

MidAmerican contends that the vastly greater switching volume that has occurred in ComEd's service territory does not make ComEd's delivery services tariffs an appropriate starting place for *pro forma* delivery services tariffs. (MidAmerican Init. Br., p. 14.) MidAmerican

indicates that the level of competition in a given service territory is affected by a number of factors, and specifically notes the importance of rates. (*Id.*) That statement in fact emphasizes ComEd's point that the single greatest factor that a RES considers in deciding whether to enter a market is the same principal factor upon which a customer makes its decision as to its electric power and energy supplier -- price.

Nonetheless, the figures demonstrate that by far the greatest number of RESs and customers are most familiar with ComEd's delivery services tariffs. As of August 31, 2000, nine RESs were certified in ComEd's service territory, eight of which were actively serving customers, while only two RESs had signed up in MidAmerican's service territory, and only one -- apparently MidAmerican itself (Rea Tr. 322-23) -- was serving customers. (Clair Reb., ComEd Ex. 3.0, p. 8). The customer statistics are overwhelming. If administrative ease on RESs is more truly a concern of the proponents of *pro forma* delivery services tariffs, then it only would make sense that any tariffs be modeled after tariffs with which they (and thousands of customers) are already familiar.

III.

Staff's Proposal For A Docket To Develop Template Tariffs Is Unlawful, Unwarranted, Unwise, And Ill-Timed

Staff prefers and proposes that the Commission create a follow-on Docket immediately after the conclusion of the current Docket to establish template tariffs to be used in the utilities' residential delivery services tariffs and implementation plan cases. (Schlaf Reb., Staff Ex. 3.0, p. 12). Under Staff's original proposal, a final Order in the follow-on Docket would be entered by July 15, 2001. (*Id.*) Staff subsequently modified its position, indicating that the procedural schedule could be lengthened to conclude in an order in October/November 2001 (Staff Init. Br., p. 16), which would be at least four or five months into the utilities' individual rate cases (much

farther as to AmerenCIPS and AmerenUE). The same criticisms of MidAmerican's proposal discussed in Section II of this Argument apply with equal force to Staff's proposal, apart from the particular flaws of MidAmerican's proposed *pro forma* tariffs.

Staff suggests that the follow-on Docket could take place simultaneously with the utilities' upcoming cases, claiming that there will not be significant additions to utilities' existing delivery services tariffs. (Staff Init. Br., pp. 13-16). There is no basis for that assumption, particularly considering the fact that business processes for residential open access have not yet been developed. (Juracek Sur., ComEd Ex. 6.0, pp. 7-8). Staff's original analysis that considering uniformity concurrently with the various residential delivery services tariffs and implementation plan Dockets would be very confusing (Schlaf Reb., Staff Ex. 3.0, p. 11) was the correct conclusion. A utility's rates necessarily are tied to the business processes that underlie the utility's terms and conditions in its tariffs. (Alongi Reb., ComEd Ex. 4.0, p. 18; Juracek Sur., ComEd Ex. 6.0, pp. 26-28). Changing terms and conditions may alter business processes, which will affect the utility's revenue requirement and its desired rates. (Juracek Sur., ComEd Ex. 6.0, pp. 26-28). Tariffs and rates simply cannot be continually modified during the course of the utilities' residential delivery services rate case, nor can they be separated. (*Id.*) The proposed schedule is simply impossible.

IV.

ComEd's Approach To The Single Billing Option Follows From The Act And Is Reasonable, Practical, And In The Best Interests Of SBO Customers

ComEd's Initial Brief showed that its approach to the subject of billing of unpaid balances and payment posting in relation to customers on the single billing option follows the

dictates of Section 16-118(b) of the Act, 220 ILCS 5/16-118(b). (ComEd Init. Br., pp. 37-39, 44). ComEd also showed that its approach is consistent with ComEd's approved delivery services tariffs and SBO rider and with the approved method for calculation of the SBO credit. (*Id*. at pp. 39, 44). ComEd demonstrated that its approach also makes sense for all parties. (*Id*. at pp. 5-6, 36-48).

NewEnergy, now joined by the IIEC, proposes that the RES-issued single bill should not include unpaid bundled services balances. (NewEnergy/IIEC Init. Br., p. 3, *et seq*.) It is not entirely clear whether NewEnergy and the IIEC also propose that any payments remitted by the RES to the utility on behalf of a customer on the SBO should be posted only to the utility's delivery services charges as NewEnergy proposed in its testimony. (*Id*.; Walsh Dir., NewEnergy Ex. KJW-1, pp.14-16). While NewEnergy's and the IIEC's Initial Brief discusses the subject, it does not contain any clear statement to that effect, and instead urges that the utilities should "separately account" for bundled services balances and delivery services balances, without sufficiently explaining what that terminology is intended to mean. (NewEnergy/IIEC Init. Br., p. 3, *et seq*.)[7] Staff has taken those two positions regarding billing and payment posting, without advocating any specific proposal. (Staff Init. Br., pp. 4-7). The Attorney General's office has taken a similar position regarding billing, based solely on its interpretation of Section 16-118(b) of the Act, and has not expressly addressed payment posting. (AG Init. Br., pp. 3-5; AG Reply Brief ["Rep. Br."], pp. 2-3).

[7] NewEnergy and the IIEC do assert that a utility's posting of payments remitted by RESs for customers on the SBO to the oldest outstanding balance for tariffed services may confuse customers, especially if the utility is a "combination" utility, which ComEd is not, and NewEnergy and the IIEC "request that the Commission prevent Edison and Ameren "from applying its [*sic*] SBO tariff in a manner that causes customer confusion." (NewEnergy/IIEC Init. Br., p. 15). If that is intended to be a request that the Commission order a change in payment posting, it is rather oblique.

Only one party, MidAmerican, proposes that the RES-issued single bill should include neither unpaid bundled services balances nor delivery services balances incurred before the customer was served by its current RES. (MidAmerican Init. Br., pp. 22-23). Similarly, only MidAmerican proposes that any payments remitted by the RES to the utility on behalf of a customer on the SBO should be posted only to the utility's delivery services charges incurred while the customer was served by its current RES. (*Id*. at pp. 23-24).

NewEnergy, the IIEC, Staff, and the Attorney General's office each attempt to transform the term "tariffed services" as used in Section 16-118(b) into a synonym for the term "delivery services", while MidAmerican now has concocted an even more convoluted "interpretation". Their arguments are wrong, for several reasons, as discussed below. Moreover, even under NewEnergy's, the IIEC's, Staff's, and the Attorney General's office's readings of Section 16-118(b), MidAmerican's "interpretation" is wrong.

NewEnergy's, the IIEC's, Staff's, and MidAmerican's arguments on the merits fare no better, as shown below. Their proposals to change billing and payment posting under the SBO address supposed problems that, if they exist at all, are minimal and may easily be avoided by RESs in any of several different ways at little or no cost. Their proposals lack merit, negate the single bill concept by requiring two or more bills to be sent to SBO customers, are contrary to the interests of customers, threaten the SBO credit, and unnecessarily impose serious burdens, costs, and risks on utilities. Their proposal also may impair ComEd's Instrument Funding Charges, which would be improper legally, as well as a matter of policy and prudence. NewEnergy, the IIEC, Staff, the Attorney General's office, and MidAmerican in their respective Initial Briefs cannot paper over any of those points. Finally, if any change in billing under the

SBO were to be made at all, it is clear that ComEd's alternative manual "work-around" proposal, while inferior to the current approach, is superior to those parties' proposals.

A. ComEd's Approach To Billing Of SBO Customers Is The Correct And Optimal Approach

1. ComEd's Approach Follows From The Act And From Its Tariffs

ComEd's Initial Brief showed that its approach to the billing of unpaid balances owed by customers on the SBO follows from Section 16-118(b) of the Act, 220 ILCS 5/16-118(b). (ComEd Init. Br., pp. 37-39).

Section 16-118(b) states as follows:

> An electric utility shall file a tariff pursuant to Article IX of the Act that would allow alternative retail electric suppliers or electric utilities other than the electric utility in whose service area retail customers are located to issue single bills to the retail customers for both the services provided by such alternative retail electric supplier or other electric utility and the delivery services provided by the electric utility to such customers. The tariff filed pursuant to this subsection shall (i) require partial payments made by retail customers to be credited first to the electric utility's **tariffed services**, (ii) impose commercially reasonable terms with respect to credit and collection, including requests for deposits, (iii) retain the electric utility's right to disconnect the retail customers, if it does not receive payment for its **tariffed services**, in the same manner that it would be permitted to if it had billed for the services itself, and (iv) require the alternative retail electric supplier or other electric utility that elects the billing option provided by this tariff to include on each bill to retail customers an identification of the electric utility providing the delivery services and a listing of the charges applicable to such services. The tariff filed pursuant to this subsection may also include other just and reasonable terms and conditions. In addition, an electric utility, an alternative retail electric supplier or electric utility other than the electric utility in whose service area the customer is located, and a customer served by such alternative retail electric supplier or other electric utility, may enter into an agreement pursuant to which the alternative retail electric supplier or other electric utility pays the charges specified in Section 16-108, or other customer-related charges, including taxes and fees, in lieu of such charges being recovered by the electric utility directly from the customer.

220 ILCS 5/16-118(b) (emphasis added).

As ComEd's Initial Brief pointed out, among other things:

> That the RES-issued single bill should include what the customer owes the utility for all of its tariffed services follows directly from the fact that Section 16-118(b) requires that payments made by the customer be posted first to the utility's "tariffed services" and from the fact that Section 16-118(b) confirms the right to disconnect the customer if the customer does not pay what it owes for the utility's "tariffed services". Reading Section 16-118(b) to call for a single bill that does not include all that the customer owes to the utility for its tariffed services simply reads those provisions out of existence. On top of that, reading Section 16-118(b) in that manner would mean that the customer would not get a single bill but rather would get two or more bills, as noted above, which is inconsistent with the very idea of the single bill and also does not make sense. A statute should be read so that it is sensible.

(ComEd Init. Br., pp. 38-39). A statute must be interpreted reasonably and not so as to cause absurd or mischievous results. *Baker v. Miller*, 1509 Ill. 2d 249, 262, 636 N.E.2d 551, 557 (1994); *Actunes v. Sookhakitch*, 146 Ill. 2d 477, 486, 588 N.E.2d 1111, 1115 (1992). Indeed, NewEnergy and the IIEC appear to concede that Section 16-118(b) should be read in light of what is convenient for customers, *i.e.*, actually receiving a single bill and being able to write a single check for their energy charges (NewEnergy/IIEC Init. Br., p. 13), as discussed further below.

NewEnergy, the IIEC, Staff, and the Attorney General's office each attempt to play down the significance of Section 16-118(b)'s use of the term "tariffed services", arguing that that term should be read to encompass only the utility's delivery services. (NewEnergy/IIEC Init. Br., pp. 6-7; Staff Init. Br., p. 7; AG Init. Br., p. 4; AG Rep. Br., p. 3 and n.2). They are mistaken. The term "tariffed services" is defined by Section 16-102 of the Act, 220 ILCS 5/16-102, to mean "services provided to retail customers by an electric utility as defined by its rates on file with the Commission pursuant to the provisions of Article IX of this Act, but shall not include competitive services." Thus, a utility's "tariffed services" includes all of its tariffed services (except for services declared competitive), not just its delivery services.

MidAmerican's Initial Brief inconsistently attempts to evade the term "tariffed services" in Section 16-1118(b) by arguing, apparently for the first time, that it should be read to mean currently provided tariffed services whether or not they are delivery services, except for currently provided tariffed services that are not tariffed electric services such as tariffed gas services. (MidAmerican Init. Br., pp. 25-26; *accord* MidAmerican Rep. Br., p. 9). Needless to say, MidAmerican fails to cite any authority in support of its transparently gerrymandered "interpretation". MidAmerican's "present tense" argument (MidAmerican Rep. Br., p. 9) has no validity in light of the actual language of the statute, and makes no sense.

Staff and the Attorney General's office argue that because Section 16-118(b) expressly provides that a utility must permit a RES to issue a single bill that includes the utility's charges for its "delivery services", then that means that the RES-issued single bill cannot include any outstanding balance for the utility's other tariffed services. (Staff Init. Br., p. 5; AG Init. Br., p. 4). That inference does not follow logically or in context, it is inconsistent with the provisions regarding "tariffed services" discussed above, and it would cause Section 16-118(b) not to make sense in practice, as shown in ComEd's Initial Brief and as discussed below. Moreover, that inference also overlooks that Section 16-118(b) provides that a utility's SBO tariff may include "other just and reasonable conditions". 220 ILCS 5/16-118(b). Thus, even supposing that there were no other legal basis for requiring the RES-issued single bill to include unpaid balances, it is quite clear that that provision would permit a utility to require the RES to include unpaid balances, if the Commission approved the utility's SBO tariff or rider. If the lack of an express reference in Section 16-118(b) to billing of unpaid bundled services balances were fatal, then the lack of an express reference in Section 16-118(b) to a single billing option credit also would be fatal to the credit. No party reads Section 16-118(b) in that manner.

Staff and the Attorney General's office also point to the fact that Section 16-118(b) requires the RES to include "identification of the electric utility providing the delivery services and a listing of the charges applicable to such services." (Staff Init. Br., p. 5; AG Init. Br., p. 4). Once again, it does not follow from the cited language that the RES-issued single bill cannot or should not include outstanding balances for the utility's other tariffed services.

The Attorney General's office also suggests that its interpretation of Section 16-118(b) somehow is supported by Part 280 of the Commission's rules. (AG Init. Br., pp. 4-5; AG Rep. Br., p. 3). The Attorney General's office overlooks that under Part 280 a utility may refuse to open a new customer account where the customer has an outstanding balance and is to remain in the same class of service (i.e., residential or non-residential). 83 Ill. Admin. Code § 280.50. If the General Assembly had Part 280 in mind, as the Attorney General's office suggests (AG Rep. Br., p. 3 and n.4), then that would indicate that it is ComEd's approach, or an approach that does not even permit a RES to place a customer on the SBO if the customer has an unpaid balance (as in CILCO's approved tariffs), that conforms with Section 16-118(b). (*See also* Kutsunis Tr. 303).

ComEd's Initial Brief showed that its approach also follows from its approved customer delivery services tariff and its approved SBO rider, because the single billing option credit stated therein was calculated based on the premise that when a RES elected the SBO as to a customer ComEd no longer would have to bill that customer, and thus any approach that undercuts that premise would require reduction, if not elimination, of the credit; and also because the SBO rider provides in part that: "Such [remittance] option, as annually selected by the RES, shall be applicable **to all payments due to the Company** from all the retail customers for which the RES is providing billing of the Company's delivery services." (ComEd Init. Br., p. 39 (emphasis added)).

The Attorney General's office suggests that even if changes to billing under the SBO may result in reduction of the SBO credit, then that does not mean that the RES-issued single bill should include unpaid bundled services balances. (AG Init. Br., p. 5). ComEd's point is that the Commission, when approving the SBO credit in ComEd's tariffs, approved a calculation based on the premise that utilities would not be billing customers once they were placed on the SBO. Thus, that determination supports ComEd's reading of its tariffs.

Staff's Initial Brief does not address ComEd's arguments based on its tariffs and the calculation of the SBO credit. (Staff Init. Br., pp. 4-7).

NewEnergy and the IIEC argue that ComEd's approach is not consistent with its tariffs. (NewEnergy/IIEC Init. Br., pp. 7-8). Their argument is disingenuous. They state that ComEd witness Sally Clair testified on cross-examination that one section of ComEd's SBO rider refers only to ComEd's delivery services charges. (*Id*. (citing Clair Tr. 523)). They fail to mention that Ms. Clair testified on redirect examination that a later section of the SBO rider (quoted above) that expressly addresses in further detail the relevant portion of the section that NewEnergy and the IIEC cite imposes the obligation on the RES to remit payment from the customer for "all payments due to the Company...", not just for its delivery services. (Clair Tr. 580-81). MidAmerican makes the same misleading argument as NewEnergy and the IIEC, except that MidAmerican acknowledges the later section of the tariff and then tries to "interpret" it not to include unpaid balances, with no legitimate justification. (MidAmerican Init. Br., pp. 26-27).

NewEnergy and the IIEC also argue that ComEd, AmerenCIPS, and AmerenUE in their respective 1999 delivery services tariffs cases did not seek "specific approval to require RESs to include unpaid balances for bundled service on the RES bills issued pursuant to their respective SBO tariffs" and that the issue was not addressed in those cases. (NewEnergy/IIEC nit. Br.,

p. 10). Their argument overlooks the above language of the SBO rider and above point regarding the determination of the SBO credit.

NewEnergy and the IIEC also state that ComEd, AmerenCIPS, and AmerenUE have not proposed that RESs should receive a credit for their "collection" of unpaid balances. (NewEnergy/IIEC Init. Br., p. 10). That statement has no relevance to whether the SBO credit was calculated based on the premise that a utility would not bill customers once they were placed on the SBO. Moreover, in ComEd's 1999 delivery services tariffs case the Commission did not adopt a proposal by Nicor Energy for a RES credit in relation to the SBO. *In re Commonwealth Edison Company*, Docket No. 99-0117, pp. 122, 126 (Order, Aug. 26, 1999). In any event, NewEnergy's and the IIEC's view that under ComEd's approach a RES is required to assume any collection function in relation to the SBO is false, as discussed below.

NewEnergy and the IIEC also argue that ComEd's approach is inconsistent with its delivery services implementation plan. (NewEnergy/IIEC Init Br., pp. 8-9). That is more legerdemain. NewEnergy and the IIEC simply have quoted a section of the plan that provides that ComEd will handle collection of unpaid balances regardless of whether the customer has been placed on the SBO. (*Id*. at p. 8). That is completely consistent with ComEd's position that the RES-issued single bill should include unpaid balances and that the RES must remit customer payments but has no obligation to engage in the collection function. (Clair Surrebuttal ["Sur."], ComEd Ex. 7.0, p. 16). Again, that is further discussed below.

NewEnergy and the IIEC make the related argument that, if, under ComEd's implementation plan, ComEd issues collection notices for unpaid balances under the SBO, then ComEd "should be required to follow-up the Collection Notices with a separate bill for those outstanding balances." (NewEnergy/IIEC Init. Br., pp. 8-9). Needless to say, there is nothing in

logic, law, or the evidence that even explains, much less justifies, the *non sequitur* that the entity that is performing collections should follow up its collection notices with a bill. ComEd's approach to billing under the SBO conforms to the Act, to its approved tariffs and its approved implementation plan, and follows from the approved SBO credit.

2. ComEd's Approach Is Optimal

ComEd's Initial Brief showed that its approach to billing under the SBO also is the optimal approach for eleven additional reasons. (ComEd Init. Br., pp. 39-43). The Initial Briefs of NewEnergy, the IIEC, Staff, and MidAmerican do not negate any of those reasons.

First, ComEd pointed out that only a small portion of customers who are placed on the SBO have outstanding balances for tariffed services; that those balances typically are cleared in very short order, with 95% resolved within 90 days; that the scenario out of which NewEnergy and MidAmerican's proposals arise thus is uncommon and transient; and that MidAmerican's witness indicated that MidAmerican does not even have any such SBO customers. (ComEd Init. Br., pp. 39-40).[8] No party's Initial Brief argues to the contrary.

Not only that, but where a RES is functioning as the customer's agent, as most RESs are and apparently intend to continue to do, at least in ComEd's service territory, the RES receives all of the bills for the utility's tariffed services, including any outstanding balances, regardless of whether the customer is on the SBO. (Clair Reb., ComEd Ex. 3.0, pp. 16, 18).

[8] ComEd's Initial Brief, due to a typographical error, in referring to MidAmerican's witness' testimony, used the word "ever" instead of "even". (ComEd Init. Br., p. 40). ComEd apologizes for that error.

NewEnergy and the IIEC make the irrelevant statement that it is possible that a customer when placed on the SBO will have an unpaid balance because of a billing dispute or because of a malfunction of ComEd information systems malfunction. (NewEnergy/IIEC Init. Br., p. 14). NewEnergy and the IIEC fail to mention that they have identified no instance where that actually occurred. They also omit that ComEd does not expect a customer to pay, or a RES to remit payment for, a charge that a customer on the SBO is formally disputing before the Commission. 83 Ill. Admin. Code Part 280. (Clair Sur., ComEd Ex. 7.0, pp. 8-9).

NewEnergy also makes the related assertion that it lacks information about the basis of the unpaid balance. (NewEnergy/IIEC Init. Br., p. 14). That, too, plainly is false, and in any event the RES has multiple means at its disposal to quickly and easily obtain such information. (Clair Reb., ComEd Ex. 3.0, pp. 22-23; Kutsunis Tr. 301-302, 304; Walsh Tr. 625, 627). Curiously, NewEnergy and the IIEC state that "the billing determinants forwarded to RESs for delivery services should not include line items for bundled services balances." (NewEnergy/IIEC Init. Br., p. 17). That would reduce the information given to RESs.

MidAmerican argues that that fraction of customers who have unpaid balances should have a "clean slate" if they are placed on the SBO. (MidAmerican Init. Br., pp. 23, 24). That is a curious argument to make on behalf of customers who have not paid for services that the utility has provided, and, setting aside where a customer is formally disputing the balance before the Commission (or is current on a payment plan for residential service), it ignores that under Section 16-118(b) and Part 280 of the Commission's rules, such a customer may be disconnected and has no right to have a new account opened in the same class of service, as discussed earlier. MidAmerican appears to be arguing for discrimination in favor of delivery services customers.

Second, ComEd pointed out that RESs have a veritable laundry list of options that allow them to avoid, minimize, or remedy any alleged problems that they might encounter or costs that they might incur when they place a customer on the SBO who has an outstanding balance for the utility's tariffed services, and that all of those options cost the RES little or nothing. (ComEd Init. Br., pp. 40-41). While NewEnergy and the IIEC assert that these options either would force NewEnergy to forego electing the SBO or would force it to file a complaint with the Commission (NewEnergy/IIEC Init. Br., p. 16), an examination of ComEd's Initial Brief's list of the options and NewEnergy's witness' testimony readily shows that assertion to be nonsense. (Walsh Reb., NewEnergy Ex. KJW-2, pp. 5-6; Walsh Tr. 627-29). MidAmerican similarly mischaracterizes a RES's many options. (MidAmerican Init. Br., pp. 29-31). MidAmerican's witnesses' admissions undercut its Initial Brief. (E.g., Kutsunis Tr. 301-302). (*See also* Schlaf Tr. 57-60).

Third, ComEd showed that the idea that, under its approach, RESs somehow are forced to take on any collection functions is false -- the RES, if it elects the SBO, simply sends out a bill and then handles any customer inquires relating to the utility's charges, if any, only at the RES' option. (ComEd Init. Br., p. 41). For example, as ComEd witness Sally Clair testified:

> Finally, a RES that elects the SBO does not assume any collection function on behalf of ComEd; the RES elects a billing and remittance function. A RES choosing the SBO must include on the single bill sent to the customer all outstanding balances that the customer owes for ComEd's tariffed services. The RES also remits to the utility, as I discussed earlier. Billing, remittance, and collection, while all parts of the overall meter to cash process, simply are not the same thing.
>
> When a RES elects the SBO, ComEd retains the collection function. ComEd handles customer and customer agent inquiries and disputes regarding the charges for ComEd's tariffed services. ComEd investigates such inquiries and disputes. ComEd makes any necessary billing corrections as to the charges for ComEd's tariffed services. ComEd posts payments for ComEd's tariffed services. ComEd updates its records as to what it is owed and what has been paid for its tariffed

services. ComEd pursues collection of overdue balances, including retaining and working with a collection agency and bringing legal action if needed. ComEd handles any bill complaints that are brought before the Commission as to charges for ComEd's tariffed services. ComEd handles disconnections for non-payment. ComEd handles any subsequent resumption of service. Thus, a RES that elects the SBO is akin to a payment center, and is not like a collection agency.

Q. Kennan Walsh, in his direct testimony on behalf of NewEnergy, stated in part: "First, when a utility requires a RES to include a customer's unpaid balance from the period on which that customer was on bundled service, the utility is forcing the RES to act more or less as an unpaid collection agency for the utility." (Walsh Direct, NewEnergy Ex. _, p. 8). Mr. Walsh also repeated later on in his direct testimony his assertion that RESs that elect the SBO are forced to perform the collection function on behalf of the utilities. (*Id*. at p. 11). Mr. Walsh quoted from your direct testimony in Commission Docket No. 99-0013 and from the Commission's Third Interim Order in that Docket. What is your response?

A. Mr. Walsh's testimony is wrong, and those quotations refute rather than support his position. The RES is not "required" or "forced" to do anything in relation to the SBO, in that it elects the SBO and it may elect to terminate the SBO, as I noted above. In addition, as I explained above, the RES simply does not act as a collection agency or otherwise perform the collection function on behalf of ComEd. Also, as I noted above, nothing prevents a RES from charging a customer for any activity performed by the RES in relation to the SBO. Mr. Walsh's attempts to use quotes from my testimony and the Commission's Third Interim Order in Commission Docket No. 99-0013, but those quotes refute, rather than support, his position. Each of the quotes recognizes that billing and collection are two separate functions. Mr. Walsh confuses those two functions.

Q. Debra Kutsunis, in her direct testimony on behalf of MidAmerican, asserted that a RES that elects the SBO is "forced to become an uncompensated collection agency for the DSP." (Kutsunis Direct, MidAmerican Ex. 2.0, p. 3). She further stated that she is "not aware of any other industry that requires one competitor to become the collection agency for another competitor, let alone 'free of charge'." (*Id*.) What is your response?

A. Ms. Kutsunis' testimony is wrong for the same reasons as is Mr. Walsh's testimony. Not only that, but Ms. Kutsunis overlooks that the single billing option itself is an aberration in the first place. I cannot think of any other industry in which one business, without the consent of a second business, is allowed to bill customers for the services provided by the

> second business. To suggest that the current aberration should be further extended such that one business, without the consent of a second business, is allowed to bill customers for a portion of the services provided by the second business while the remaining portion must be billed by the second business, has no basis.
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(Clair Reb., ComEd Ex. 3.0, pp. 19-21). Indeed, NewEnergy elsewhere states that it has assumed "collection activities" in relation to the SBO not because it was required to do so but "[a]s a matter of courtesy and cooperation with Edison...." (NewEnergy/IIEC Init. Br., p. 13).

NewEnergy, the IIEC, Staff, and MidAmerican nonetheless each assert here that ComEd's approach somehow forces a RES to perform the collection function under the single billing option (NewEnergy/IIEC Init. Br., pp. 11-12, 14, 15-16; Staff Init. Br., p. 4; MidAmerican Init. Br., pp. 22, 23; MidAmerican Rep. Br., p. 8), but it is painfully obvious that that is not true. Thus, NewEnergy's and the IIEC's related argument that ComEd's approach is inconsistent with ComEd's testimony, and with the Commission's Third Interim Order, in Docket No. 99-0013, which also rests on the theory that RESs supposedly are forced to assume the collection function under the SBO (NewEnergy/IIEC Init. Br., pp. 10-12), also plainly is not true. While NewEnergy complains of having to discuss outstanding balances with customers (*id*. at p. 14), not only is that not required and easily avoidable, as indicated above, but NewEnergy does not even bother to suggest how often it has such discussions. (*Accord* Clair Reb., ComEd Ex. 3.0, pp. 22-23).

NewEnergy and the IIEC also offer irrelevant innuendo that it is "troubling" that ComEd recovers uncollectible expenses both through bundled services rates and delivery services rates. (NewEnergy/IIEC Init. Br., p. 16). NewEnergy and the IIEC, who were active parties, know perfectly well that the allocation of ComEd's uncollectible expenses between bundled services customers and delivery services customers was litigated and determined by the Commission in

ComEd's 1999 delivery services tariffs and implementation plan. *In re Commonwealth Edison Company*, Docket No. 99-0117, p. 23 (Order, Aug. 26, 1999).

Fourth, ComEd pointed out that any suggestion that under ComEd's approach RESs somehow are forced to take on financial liability for customer's unpaid balances equally is false. (ComEd Init. Br., p. 41). No party's Initial Brief argues otherwise. NewEnergy's and the IIEC's assertion that ComEd "would like to make RESs become financially responsible for the debts that they are seeking to collect" (NewEnergy/IIEC Init. Br., p. 16) is not supported by the letter that they cite and once again falsely assumes that ComEd's approach requires a RES to perform collection functions. NewEnergy and the IIEC also conveniently ignore that ComEd offers RESs two remittance options under the SBO, and under one of these options -- the one that every RES electing single billing actually has selected -- the RES remits payment to ComEd only to the extent that the customer has paid the RES. (Clair Reb., ComEd Ex. 3.0, pp. 16, 18-19, 21-22).

Fifth, ComEd established that, under its approach, unlike those of NewEnergy, the IIEC, Staff, the Attorney General's office, and MidAmerican, customers on the single billing option are sent only a single bill, not two or more bills, and that, given the single billing option as required by Section 16-118(b), ComEd's approach maximizes economic efficiency. (ComEd Init. Br., p. 41). Here, too, no party's Initial Brief argues to the contrary.

Sixth, ComEd pointed out that an approach to the single billing option that actually results in a single bill is in the interests of a RES, because it permits the RES at its option to expand the scope of its contact with the customer while diminishing that of the utility. (ComEd Init. Br., p. 42). NewEnergy and the IIEC assert that ComEd's approach damages the relationship between the RES and the customer (NewEnergy/IIEC Init. Br., pp. 13-14), but their assertion is without merit. They claim that ComEd has attempted to apply its SBO rider "in a

manner that inappropriately and unnecessarily intrudes upon and disrupts the relationship that a RES has with its customer" (*id.* at p. 13), but they fail to cite any evidence that substantiates that claim. Indeed, ironically, NewEnergy and the IIEC here acknowledge that customers prefer to receive a single bill and to write a single check for their energy charges (*id.*), which is what ComEd's approach, not that of NewEnergy and the IIEC, achieves. Their assertion otherwise rests on their erroneous claim that a RES is forced to assume collection functions (*id.* at p. 14), which has been disproved above.

NewEnergy and the IIEC do assert that ComEd's approach somehow is "contrary to the way in which it interacts with RESs" (NewEnergy/IIEC Init. Br., p. 12). However, their argument is based on the fact that ComEd is unwilling to collect a RES' outstanding balances because ComEd is not part of the RES-customer relationship. (*Id.* at pp. 12-13). NewEnergy and the IIEC go on to state: "Edison similarly should respect RESs' desire to stay out of Edison's relationship with its former bundled service customer." (*Id.* at p. 13). That is more nonsense. When a RES elects the SBO it does so without needing the consent of ComEd or the customer, and the RES thereby forcibly (albeit legally under Section 16-118(b)) intervenes in the relationship between ComEd and the very customer that owes the outstanding bundled balance. Not only that, but there is nothing in ComEd's approach that requires a RES to be involved in the relationship between ComEd and the customer, except that, if the RES makes the voluntary choice to elect the SBO, then ComEd properly expects the RES to bill what ComEd is owed for its tariffed services and to remit payment from the customer.

Seventh, and even more importantly, ComEd established that an approach to the single billing option that actually results in a single bill is in the interests of SBO customers, in multiple respects. (ComEd Init. Br., p. 42). In fact, the testimony of Staff's, NewEnergy's, and

MidAmerican's respective witnesses as well as NewEnergy's and the IIEC's Initial Brief confirms that it is in the interests of customers to actually receive a single bill and then to be able to write a single check for their energy charges. (Schlaf Tr. 107-108; Walsh Tr. 614; Kutsunis Tr. 294-97; NewEnergy/IIEC Init. Br., p. 13). MidAmerican's witness also stated that it is in customers' interests to have a single point of contact regarding their energy charges. (Kutsunis Tr. 297). She also stated that the Commission should consider the interests of customers. (*Id.* at 305).

NewEnergy, the IIEC, and MidAmerican attempt to obscure that their proposals are inimical to the interests of customers by arguing that ComEd's approach is likely to confuse customers. (NewEnergy/IIEC Init. Br., pp. 14-15; MidAmerican Init Br., p. 23). Perhaps needless to say, they cannot get very far with that argument because, among other things, any alleged confusion easily could be avoided if the RES explained the SBO to the customer, and because it is impossible to make plausible the notion that a customer that is placed on the SBO will be less confused if it receives not a single bill but two or more bills, as even the testimony of MidAmerican's witness amply demonstrated. (Clair Reb., ComEd Ex. 3.0, pp. 25, 26-27; Clair Sur., ComEd Ex. 7.0, pp. 7-8; Schlaf Tr. 57-58; Kutsunis Tr. 304-305).

Eighth, ComEd pointed out that departing from ComEd's approach would mean that the RES would have the option of billing some but not all of ComEd's charges for its tariffed services, while relegating ComEd either to billing the remaining charges or putting the customer directly into the collections process, and that that is commercially unreasonable. (ComEd Init. Br., p. 42). Once more, no party's Initial Brief contains any meaningful response. NewEnergy's and the IIEC's argument that the final report issued in the Uniform Business Practices process somehow undercuts ComEd's approach (NewEnergy/IIEC Init. Br., pp. 17-18) already has been

quite thoroughly debunked, not least because the section of the report that NewEnergy and the IIEC cite relates to where the utility is providing consolidated billing. (Hock Sur., Ameren Ex. _, pp. 1-3; Clair Sur., ComEd Ex. 7.0, pp. 12-13). NewEnergy's and the IIEC's irrelevant assertion that ComEd "has no plans to incorporate any of the common business practices from the UBP report into its delivery services tariffs" (NewEnergy/IIEC Init. Br., p. 18) cites, but grotesquely misstates, the testimony of ComEd witness Sally Clair. (Clair Tr. 473-76).

Ninth, ComEd established that, for the same reasons, departing from ComEd's approach would require ComEd to incur massive person-hours and new costs for training and for new manual processes and/or information system modifications. (ComEd Init. Br., pp. 42-43, 46-47). No party's Initial Brief is to the contrary.

Staff seeks to dismiss ComEd's argument on the theory that ComEd in the future can seek recovery of any added costs that it will incur if billing under the SBO is changed. (Staff Init. Br., p. 6). Staff's point that ComEd may be able to recover such costs in the future ignores that ComEd has finite personnel resources, that changing ComEd's information systems involves inherent risks to the system, as discussed below, and that requiring ComEd to undertake these burdens, costs, and risks is unjustified given the absence of any good reason to change billing under the SBO, regardless of the extent to which ComEd's customers ultimately may have their rates increased to pay for these activities.

Tenth, ComEd showed that departing from ComEd's approach to billing would facilitate customer "gaming" at ComEd's expense. (ComEd Init. Br., p. 43). No party's Initial Brief argues to the contrary.

Finally, ComEd pointed out that it is too early in the introduction of open access, including the implementation of the SBO, to form a judgment that there should be significant

changes to how billing is handled in that context. (ComEd Init. Br., p. 43). No party's Initial Brief directly addresses that point.

NewEnergy and the IIEC perhaps indirectly attempt respond to that point when they argue that there is a low level of RESs electing the SBO. (NewEnergy/IIEC Init. Br., pp. 5-6). That is a red herring. NewEnergy and the IIEC conveniently and misleadingly ignore that if a RES also is acting as the customer's agent, as most RESs are doing and apparently intend to continue to do, at least in ComEd's service territory, then the RES has no need to elect the SBO, because the RES already receives all bills for the customer regardless of whether the customer is placed on the SBO. (Clair Reb., ComEd Ex. 3.0, pp. 16, 18). In addition, NewEnergy and the IIEC admit that ComEd's service territory actually is the only one in which two RESs -- one of which is NewEnergy -- have elected the SBO, and that it is the territory in which the most customers have been placed on the SBO. (*Id*. at p. 5). NewEnergy and the IIEC fail to recognize the resulting irony in their arguments that some other utilities have superior approaches to billing under the SBO and that ComEd is engaged in "anti-competitive practices" "designed to discourage RESs from providing single-billing service." (*Id*. at pp. 3, 19). Of course, NewEnergy's and the IIEC's aspersions are not supported by the evidence in the record. Indeed, while NewEnergy asserts that it "has patiently worked with Edison over the past year in an attempt to resolve this issue" (*Id*. at p. 5), during this period it was ComEd that was performing a burdensome manual "work-around" process to assist NewEnergy in billing under the SBO, for which ComEd received no compensation. (Clair Reb., ComEd Ex. 3.0, p. 37).

ComEd's Initial Brief aptly summed up the issue of billing under the SBO as follows:

> Given all of the foregoing regarding the limited scope and duration of the scenario out of which NewEnergy's and MidAmerican's proposals arise, the many tools available to RESs to avoid, minimize, or remedy any alleged problems, and the other relevant considerations such as the interests of customers and the burdens,

> costs, and risks that would be imposed on ComEd, the proposals by NewEnergy and MidAmerican to change ComEd's approach to billing do not pass scrutiny under the type of rational cost-benefit analysis that should be employed here, if those proposals are to be considered at all.

(ComEd Init. Br., p. 43). NewEnergy's, the IIEC's, Staff's, and MidAmerican's Initial Briefs do not and cannot negate any of those points.

B. ComEd's Approach To Posting Of Payments Made By SBO Customers Is The Correct And Optimal Approach

1. ComEd's Approach Conforms With The Act And With Its Tariffs

ComEd's Initial Brief established that ComEd's approach to payment posting in relation to customers on the SBO is the approach that conforms to Section 16-118(b) of the Act, 220 ILCS 5/16-118(b). (ComEd Init. Br., p. 44). Indeed, on the subject of payment posting, ComEd's argument that its approach follows from Section 16-118(b) is even stronger, given the express language regarding application of partial payments to its "tariffed services", which was quoted earlier. Not surprisingly, NewEnergy, the IIEC, Staff, and MidAmerican present no independent legal argument regarding payment posting.

ComEd pointed out that its approach also follows from its customer delivery services tariff and its SBO rider. (ComEd Init. Br., p. 44). Here, too, ComEd's argument is even stronger, given the express language regarding remittances, which also was quoted earlier. NewEnergy, the IIEC, Staff, and MidAmerican again present no independent argument.

ComEd also pointed out that its approach also follows from the legislation and the Commission order relating to ComEd's Instrument Funding Charges. (ComEd Init. Br., pp. 44, 45-46). Although ComEd repeatedly has raised this issue, NewEnergy, the IIEC, Staff, and MidAmerican never have offered any response.

2. ComEd's Approach Is Optimal

ComEd's Initial Brief also established that for numerous reasons discussed in relation to the subject of billing under the SBO, and for seven additional reasons, ComEd's approach to payment posting under the SBO -- application of customer payments to the oldest outstanding balance -- is the correct and optimal approach for all parties. (ComEd Init. Br, pp. 45-47).

As to those additional reasons, first, ComEd established that its approach to payment posting is the only commercially reasonable approach. (ComEd Init. Br., p. 45). The evidence is uncontradicted that ComEd's posting of payments to the oldest outstanding balance is consistent with common industry practice; and, in fact, at least approximately 20 other major utilities throughout the nation follow the same practice. (Meehan Sur., ComEd Ex. 9.0, p. 4). NewEnergy's and MidAmerican's witnesses admitted that they, too, post customer payments to the oldest outstanding balance. (Walsh Tr. 636; Kutsunis Tr. 300-301). MidAmerican professes puzzlement as to why ComEd has pointed out that it has followed the same posting order for decades (MidAmerican Init. Br., pp. 27-28), but ComEd expressly made this point in response to NewEnergy's innuendo about ComEd's development of its posting order. (Meehan Sur., ComEd Ex. 9.0, pp. 3-4).

Second, ComEd pointed out that its approach makes sense because otherwise ComEd unfairly will be placed in the position of not being paid for earlier-provided tariffed services while RESs are being paid for later-provided services, which will deny ComEd the time value of payment for its tariffed services and increase the risk of non-payment, would appear to risk impairment of ComEd's Instrument Funding Charges, and would jeopardize the appropriate and timely payment of taxes. (ComEd Init. Br., pp. 45-46). Staff's assertion that it is unjust and

absurd for a RES not to be paid for later-provided services before a utility is paid for earlier-provided services (Staff Init. Br., pp. 6-7) turns the world on its side.

Third, ComEd showed that its approach makes sense because otherwise customers will be more likely to incur late charges, to be placed in the collection process, and to be disconnected, with all of the attendant detriments for customers and for ComEd, including increased numbers of billing disputes. (ComEd Init. Br., p. 46). NewEnergy, the IIEC, Staff, and MidAmerican fail to address these problems.

Fourth, ComEd Pointed out that altering the payment posting order would require the creation of two or more accounts per customer, which would result in the loss of customer history data or render that data not available as a practical matter, which is not in the interests of RESs or customers. (ComEd Init. Br., p. 46). NewEnergy and the IIEC perhaps imply that these problems might be avoided (NewEnergy/IIEC Init. Br., p. 19), but the evidence is to the contrary. NewEnergy and the IIEC apparently are relying on the testimony of MidAmerican's witness, but on cross-examination she gave testimony that precludes any such reliance. (Kutsunis Tr. 305).

NewEnergy and the IIEC assert that "MidAmerican's solution is identical to the procedure in [*sic*] which a utility employs if a customer files for bankruptcy." (NewEnergy/IIEC Init. Br., p. 19). MidAmerican proposes that every time a customer is switched, is put on interim supply service, or leaves or returns to bundled service, the utility should create a new account for the customer. (MidAmerican Init. Br., pp. 23, 24; Kutsunis Tr. 288-90). Thus, under MidAmerican's proposal, a customer could have as many as four accounts in as little as two or three months. (Kutsunis Tr. 288-90). Also, in the bankruptcy circumstance, absent a court order, federal law essentially precludes the utility from putting the customer in the collections

process for unpaid balances for pre-petition services. 11 U.S.C. § 362, *et seq*. NewEnergy's and the IIEC's assertion about MidAmerican's "solution" obviously is not correct. NewEnergy's and the IIEC's innuendo that two witnesses, including one from ComEd, "feigned no knowledge of how their respective companies handled the situation when a customer files for bankruptcy" (NewEnergy/IIEC Init. Br., p. 19) is irresponsible and offensive and should be retracted.

Fifth, ComEd pointed out that the creation of multiple accounts per customer also would hinder the tracking of outstanding balances, resulting in increased bad debt, which is not in the interests of customers. (ComEd Init. Br., p. 46). NewEnergy, the IIEC, and MidAmerican offer no valid response.

Finally, ComEd established that the creation of multiple accounts per customer would require massive changes to ComEd's billing processes and information systems, with huge attendant burdens, costs, and risks to the stability of the systems, as well as interfering with other important work on the systems. (ComEd Init. Br., pp. 46-47). Once more, NewEnergy, the IIEC, and MidAmerican offer no meaningful response. MidAmerican admits that the Commission should consider the costs of proposals to change the current approach to the SBO. (Kutsunis Tr. 305). Whether IP already has incurred those burdens, costs, and risks in whole or in part (NewEnergy/IIEC Init. Br., p. 19) is irrelevant to whether ComEd now should be required to do so. IP, in fact, expended considerable effort and resources. (Gudeman/Smith Reb., IP Ex. 3, p. 16; Gudeman/Smith Tr. 258).

NewEnergy and the IIEC attempt to suggest that ComEd already has the capability to separately account for and collect outstanding bundled services balances. (NewEnergy/IIEC Init. Br., p. 9). They are distorting the testimony they cite, which relates to collection notices that

include all of a customer's outstanding balances and do not separate bundled from delivery services balances. (Clair Tr. 449-51).

Staff suggests that ComEd's information systems "were purposely designed to obligate suppliers to collect outstanding bundled service charges through the single billing process even though ComEd, at least, can send a 'final notice' to customers." (Staff Init. Br., p. 5). Staff appears to be missing the point that ComEd's information systems were purposely designed so that when a RES placed a customer on the SBO the customer actually would receive a single bill, which is the very concept of the single billing option, as discussed earlier.

Given all of the foregoing, NewEnergy and MidAmerican's proposals relating to billing of unpaid balances and to payment posting under the single billing option plainly are illegal, unwarranted, and imprudent. Their proposals should be rejected.

C. ComEd's Alternative Manual "Work-Around" Proposal, While Inferior To ComEd's Existing Approach, Is Superior To NewEnergy's And MidAmerican's Proposals

ComEd's existing approach to billing and payment posting under the single billing option is the correct and optimal approach, as has been shown above. ComEd's Initial Brief established that, assuming that the Commission were to conclude, however, that the RES-issued single bill need not include outstanding balances for the utility's tariffed services other than delivery services, then ComEd's manual "work-around" proposal (which is based on an accommodation that ComEd offered RESs billing under the SBO, and that NewEnergy took advantage of), and not NewEnergy's and MidAmerican's proposals, would be the superior approach.[9] (ComEd Init.

[9] As ComEd's Initial Brief noted, ComEd, in view of certain comments of Staff witness Dr. Eric Schlaf in his rebuttal testimony, presented a somewhat different version of its proposal in ComEd witness Sally Clair's surrebuttal testimony. ComEd considers both versions of the alternative proposal to be "on the table", but it is ComEd's understanding that the later version addresses certain of Staff's concerns better than the former version.

Br., pp. 47-48). NewEnergy's and the IIEC's Initial Brief did not directly address ComEd's alternative proposal. Staff's Initial Brief only referred obliquely to the proposal. (Staff Init. Br., p. 6). MidAmerican's Initial Brief noted, but did not discuss, the proposal. (MidAmerican Init. Br., p. 29).

CONCLUSION

For the reasons stated in its Initial brief and herein, and all reasons appearing of record, Commonwealth Edison Company respectfully requests that the Commission adopt the recommendations stated in its Initial Brief and herein.

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Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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PROOF OF SERVICE

I, Cynthia A. Fonner, one of counsel to Commonwealth Edison Company, hereby certify that copies of the foregoing Reply Brief of Commonwealth Edison Company were served on the persons on the attached Service List, at the addresses specified, by deposit in the United States mail, first class postage prepaid, at Three First National Plaza, 70 W. Madison St., Chicago, Illinois 60602, on January 26, 2001.

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